

1989

State of Utah v. Michael R. Moore : Unknown

Utah Court of Appeals

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Robert N. Parrish; Nicholas E. Hales; Utah Attorney General;s Ofc.; Attorneys for Plaintiff.

James N. Barber; Attorney at Law; Attorney for Defendant.

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BRIEF

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

89-5584

* * *

STATE OF UTAH,

:

Plaintiff,

: Case No. 88-CR-8D

v.

: Transcript of:

MICHAEL R. MOORE,

: TRIAL PROCEEDINGS
: PARTIAL TRANSCRIPT

:

Defendant.

V O L U M E 2

:

* * *

BEFORE THE HONORABLE ALLEN B. SORENSEN, JUDGE

Duchesne, Utah

September 21, 1988

APPEARANCES

For the Plaintiff:

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1 WEDNESDAY, SEPTEMBER, 28, 1988

2 TRIAL PROCEEDINGS

3
4 THE COURT: Let the record show that all the
5 jurors are present in the jury box. The defendant is in
6 court with his counsel.

7 Will you call your next witness, Mr. Parrish.

8 MR. PARRISH: Mr. Hales.

9 MR. HALES: George Miller.

10 GEORGE MILLER

11 called as a witness for and on behalf of the plaintiff,
12 having first been duly sworn, was examined and testified
13 as follows:

14 EXAMINATION

15 BY MR. HALES:

16 Q Could you please state your name for the
17 record?

18 A George Miller.

19 Q And where do you reside?

20 A 908 Loreda Drive; Sandy, Utah.

21 Q Are you acquainted with Michael R. Moore?

22 A Yes, sir, I am.

23 Q Is he in the courtroom today?

24 A Yes.

25 Q Would you please point him out and describe

1 Factoring?

2 A Yes, I did.

3 Q And approximately when was the first date of
4 your employment?

5 A It was right around the first of February.

6 Q Of which year?

7 A 1983.

8 Q And how long were you employed with American
9 Factoring?

10 A Through the end of July 1983.

11 THE COURT: 198- who?

12 THE WITNESS: 1983.

13 THE COURT: Speak up so that the jury can
14 hear you.

15 Q (By Mr. Hales) During your employment with
16 American Factoring what were your job duties and
17 responsibilities?

18 A Well, they were typical bookkeeping-type
19 functions. I was responsible for handling the checking
20 accounts as well as keeping schedules of when the notes
21 were coming due, interest payments to clients or to
22 investors, and primarily dealing with keeping track of
23 the collateral and things that were being used to back
24 up those notes.

25 Q And these jobs were done at the instruction

1 of Mr. Moore?

2 A Yes.

3 Q What were Mr. Moore's job duties and
4 responsibilities?

5 A He was president of the company. So he
6 pretty much organized the whole office, and it was under
7 his direction.

8 Q In your job at American Factoring, did you
9 have custody of or access to the financial records of
10 the company?

11 A Yes, I did.

12 Q And what type of records or accounts did you
13 have access to?

14 A Well, pretty much everything. I had access
15 to all the file cabinets that had the financial records
16 the banking records, to the promissory notes that had
17 been issued to investors, to all of the titles and
18 things like that that were being held as part of the
19 collateral.

20 Q Could you give the jury an idea of how large
21 or small the number of documents, when you are talking
22 about -- when you are talking about these different
23 financial documents?

24 A I don't know. I think there were five or six
25 file cabinets total.

1 Q And the file cabinets would be full with
2 these documents; is that correct?

3 A Pretty much. I can't --

4 Q To the best of your knowledge, did you have
5 access to all of the records at American Factoring?

6 A Yes.

7 Q Were the records and accounts which you had
8 access to records and accounts that were kept to the
9 normal course of business in American Factoring?

10 A Yes.

11 Q How many bank accounts did American
12 Factoring maintain while you were employed at American
13 Factoring?

14 A I was aware of five.

15 Q And what were those accounts?

16 A There was American Factoring, American
17 Factoring of Idaho, American Factoring of Texas,
18 Bonneville Resources, and "M" Management.

19 Q And where were those accounts maintained?

20 A The main account, American Factoring, was
21 maintained at the Bank of Utah. I couldn't say for sure
22 where the rest of them were for sure. It's been so
23 long.

24 Q And during the time of your employment, did
25 have you have responsibility over these accounts?

1 A Yes.

2 Q During to the time of your employment, were
3 you in a position to know the source of income coming
4 into specifically the American Factoring account and the
5 use of the money going out of the American Factoring
6 account?

7 A Yes.

8 Q To your knowledge did anyone employed by
9 American Factoring have the duty to find account
10 receivables for purchase?

11 A No.

12 Q Was there anyone on the staff of American
13 Factoring who had the responsibility for obtaining
14 clients?

15 A No. Not for accounts receivable.

16 Q Are you aware of any collection of accounts
17 receivables made by anyone at American Factoring?

18 A No.

19 Q Were you in a position where you would have
20 known if any efforts were made to collect on accounts
21 receivables?

22 A I think so, yes.

23 Q During the course of your employment at
24 American Factoring, did you ever have any discussions
25 with Mr. Moore relative to the collection of accounts

1 to-one collateral was that we only had copies of
2 things. We didn't have original deeds. We didn't have
3 original title searches. We didn't have original copies
4 of many of the things that were in here that we were
5 using to say were being used for the collateral for the
6 company. Many of the positions had not been recorded
7 properly at the courthouse. Things like that.

8 Q Did you discuss these concerns with
9 Mr. Moore?

10 A Yes.

11 Q And what was his response?

12 A That he was in control. I needn't worry.

13 Q Did you ever have occasion to discuss the
14 contents of Exhibit 29 with anyone besides Mr. Moore?

15 A Yes.

16 Q Who?

17 A Brian McGavin.

18 Q When did you discuss Exhibit 29 with
19 Mr. McGavin?

20 A In May of the same year, 1983.

21 Q Where did that discussion take place?

22 A In the office of Brian McGavin.

23 Q Who was Brian McGavin?

24 A He was a CPA that had prepared the financial
25 statements for American Factoring.

1 A Brian McGavin, Neil Sabin and myself.

2 Q What did you tell Mr. Sabin?

3 A The same thing that I had related to
4 Mr. McGavin.

5 Q And what did Mr. Sabin do in response to your
6 discussion with him?

7 A He placed a phone call to Mr. Moore.

8 Q Turning your attention back to your duties at
9 American Factoring, in February of 1983 when you first
10 became employed with American Factoring, were you in a
11 position, based upon your review of the financial
12 records of the company, where you could make a
13 determination as to the source of income coming into the
14 American Factoring account?

15 A Yes.

16 Q And during the month of February of 1983,
17 according to your recollection, what was the source of
18 income coming into the American Factoring account?

19 A Investor money.

20 THE COURT: What was your answer?

21 THE WITNESS: Investor money.

22 Q Again during the month of February of 1983,
23 and according to your own recollection, what was the
24 primary use of money in the American Factoring account
25 during the month of February of '83?

1 A Well, the money was used to lend money, to
2 pay interest on notes that were already -- had already
3 been given, and to take care of office expenses,
4 salaries, things like that.

5 Q During the time of your employment at
6 American Factoring, from February of 1983 to July of
7 1983, did you continue to be in a position where, based
8 upon your review of the financial records, you were in a
9 position to make a determination as to the source of
10 income coming into American Factoring?

11 A Pretty much, yes.

12 Q And during that time period, did the source
13 of income coming into the account, according to your
14 own recollection, change during the course of your
15 employment?

16 A No.

17 Q What was that source again?

18 A Investor money.

19 Q Again, with regards to the use of the money
20 in the American Factoring account, did you continue to
21 be in a position in your employment at American
22 Factoring where you had access to the records and could
23 review the records and make a determination as to the
24 use of the moneys in the American Factoring account?

25 A Yes.

1 correct?

2 A According to the notes.

3 Q All right. Now, when we get down to the
4 bottom half of page 1 and the balance of the entries on
5 page 2 of Exhibit 29, we are not talking about
6 promissory notes held as collateral, are we, anymore?

7 A No.

8 Q What are the references on the bottom of 29
9 and page 2 of 29, what are those reference related to?

10 A Copies of appraisals of different lands, and
11 the different positions that had been recorded and what
12 position American Factoring would be in with respect to
13 those lands.

14 Q All right. In other words, those amounts
15 reflected, across from the description of property,
16 purport to represent the interest of American Factoring
17 in developed and undeveloped real property, did they
18 not?

19 A Purport, yes.

20 Q All right. And I take it before you would
21 make an entry there of a collateral value in favor of
22 American Factoring, you would not be satisfied until
23 you had examined some document that purported to convey
24 that interest. Is that correct?

25 A That's right.

1 Q And of course you were concerned that you
2 were just looking at copies. Right?

3 A Right.

4 Q Now, most of the documents representing
5 those interests were trust deeds, were they not?

6 A Some of them were, yes.

7 Q And what kind of other documents were made
8 by the owners of real property to vend to American
9 Factoring some interest in the property other than
10 trust deeds?

11 A I'm not sure I understand your question.

12 Q What other instruments were used to convey
13 property to American Factoring?

14 A Well, there are several things listed here in
15 addition to the property that were -- like the Woods
16 notes. Those were copies of invoices, things like that.

17 Q All right. Now, go back to my question. You
18 said that some of the real property interests were
19 conveyed by trust deed. Right?

20 A Right.

21 Q Were there other kinds of instruments that
22 conveyed interest in part to American Factoring.

23 THE COURT: You mean real property?

24 MR. BARBER: Yes. Real property.

25 Q (By Mr. Barbary) Quitclaim deeds, for

1 instance.

2 A Yes.

3 Q There were quitclaim deeds, and there were
4 grant and warranty deeds as well?

5 A Copies.

6 Q Yes. I understand that. And those grant and
7 warranty deeds, to your knowledge, were used in some
8 cases, were they not, to avoid the foreclosure
9 requirements of the use of trust deeds?

10 A Yes.

11 Q And what we really had is a situation where
12 somebody who owed money to American Factoring would give
13 them a quitclaim deed to the property which would let
14 American Factoring record the deed and take over the
15 property without foreclosure. Is that right?

16 A That was the assumption, yes.

17 Q All right. Now, in terms -- you just made a
18 reference to the Woods notes. Who is Wood?

19 A I had never met Mr. Wood. Apparently he was
20 a previous person or organization that money had been
21 lent to out of American Factoring. And we had taken as
22 collateral notes or invoices of a bunch of doctors, as I
23 remember. They were copies of old invoices.

24 Q Well, old invoices?

25 A Yes.

1 it?

2 THE WITNESS: Yes.

3 MR. BARBER: Memories do fade.

4 Q (By Mr. Barber) You indicated that you were
5 concerned because American Factoring Corporation
6 apparently wasn't making a significant effort to collect
7 on the receivables it had purchased. Is that the gist
8 of what you said in direct testimony?

9 A Yes.

10 Q All right. You were aware, however, were you
11 not, that the firm had retained a firm of attorneys to
12 represent it?

13 A I'm aware, yes, that there were attorneys.

14 Q Do you know who that was?

15 A Well, the main attorney was Neil Sabin. I
16 don't know. I can't remember the name of the firm.

17 Q And he had responsibility, did he not, to
18 American Factoring to advise American Factoring in
19 compliance with the Securities Acts as well as other
20 things. Isn't that your understanding.

21 MR. HALES: Your Honor, I am going to have to
22 object to that. That calls for all types of conclusions
23 that Mr. Miller is not in a position to make.

24 THE COURT: I don't think he has been
25 qualified as an attorney.

1 raising of money by the sale of notes to investors?

2 A Yes. There had been some discussion.

3 Q And in point of fact, there came a time, did
4 there not, when the firm determined to cease selling
5 notes to investors. And that was during the period that
6 you still worked there, wasn't it?

7 A I don't think that's the way it occurred.
8 But it happened.

9 Q Tell me how it occurred.

10 A Okay. I went to Mr. McGavin's office, showed
11 him this instrument and told him what I thought. We
12 went directly from there to Mr. Sabin's office and
13 showed him the document and told him what we thought.
14 And he called Mr. Moore and said, We are withdrawing the
15 offering.

16 Q When did that occur?

17 A In May of 1983.

18 Q So, I take it Mr. Moore conceded that that
19 should be done, did he not?

20 A Yes.

21 Q And they didn't raise any more investor funds
22 after May of 1983?

23 A Not in American Factoring.

24 Q So the actual source of cash wasn't investor
25 funds at all. It was some other source of cash, was it

1 not?

2 THE COURT: Just a minute. Will you read that
3 question back.

4 Do you understand that question?

5 THE WITNESS: I'm not sure I do.

6 MR. BARBER: I'll rephrase it.

7 THE COURT: All right.

8 Q (By Mr. Barber) If it is true that they
9 ceased -- it is true, according to your testimony just
10 now, that they quit raising money from investors in
11 May. Is that correct?

12 A Yes.

13 THE COURT: Is that while you were still
14 employed there?

15 THE WITNESS: Yes.

16 Q (By Mr. Barber) So, it is not true that the
17 primary source of funds was funds from investors clear
18 through July?

19 A There were no source of funds from the time
20 it was stopped until I left.

21 Q Now, did you have occasion to examine the
22 accounts of the firm during June and July?

23 A Yes. I was still there.

24 Q And your testimony is that, effectively they
25 did not have substantial income during that period. Is

1 that?

2 THE WITNESS: Yes.

3 THE COURT: Of your own knowledge?

4 THE WITNESS: Yes. We discussed that.

5 Q (By Mr. Barber) In fact, the firm sued

6 Mr. Bogart and attempted to foreclose on that house?

7 A I don't remember anything about that.

8 MR. BARBER: All right.

9 THE COURT: Mr. Hales, anything further of

10 this witness?

11 MR. HALES: No more, your Honor.

12 THE COURT: Thank you, Mr. Miller. You may

13 step down.

14 You may call your next witness.

15 MR. PARRISH: Thank you, your Honor. The

16 State will call Mark Wood.

17 MR. HALES: Your Honor, may this witness be

18 excused?

19 MR. BARBER: No objection.

20 THE COURT: He's excused.

21 What's the name of the next witness.

22 MR. PARRISH: Mark Wood, your Honor.

23 MARK WOOD

24 called as a witness for and on behalf of the plaintiff,

25 having first been duly sworn, was examined and testified

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. PARRISH:

4 Q Would you please state your full name, sir.

5 A Mark A. Wood.

6 Q And where do you reside?

7 A In Laguna Niguel, California.

8 Q How long have you lived there?

9 A Specifically in Laguna Niguel, about ten
10 years approximately. I should have mentioned there was
11 an interim in which I lived for some three years in
12 Nevada.

13 Q Are you originally from Utah, sir?

14 A Yes.

15 Q Where were you from originally?

16 A Cedar City, Utah.

17 Q Are you employed?

18 A I'm self-employed.

19 Q What is the nature of your business?

20 A I am a motion picture producer. And also I
21 do packaging of programs, and invest in real estate and
22 things of that nature.

23 Q What's the name of your company?

24 A Mark Wood & Associates.

25 Q Has that been the case since 1981?

1 A I have had that business for some 40 years.
2 But I have had other businesses as well.

3 Q I see. Could you explain to us what the
4 business of Teleproductions is?

5 A Teleproductions was a production company that
6 was producing -- it's a division of one of my parent
7 companies, M.A. Wood, Incorporated. It produced films,
8 film strips. It produced records, music and other types
9 of productions. It was an inhouse production company.

10 Q You are using the past tense was. Is
11 Teleproductions no longer one of your businesses?

12 A It has been put on the shelf. It no longer
13 is in use.

14 Q Between 1981 and 1983, was Teleproductions
15 operating as a business?

16 A Yes.

17 Q Mr. Wood, did you also own some property in
18 Nevada?

19 A Yes.

20 Q And where is that property located?

21 A A place called Caliente, Nevada.

22 Q Thank you. What's the name of that
23 property? Does it have a name?

24 A There were two parts to the property. One
25 was -- it was a division of M.A. Wood Company,

1 Incorporated. It was called Meadow Valley Properties.
2 And the other one I owned personally which was Meadow
3 Valley Land and Cattle Company.

4 Q So, Meadow Valley Properties, was that a
5 separate business? Was that again one of your
6 businesses?

7 A Yes. It was a division of my parent
8 corporation.

9 Q Mr. Wood, are you personally acquainted with
10 Mr. Michael Moore?

11 A Yes.

12 Q Is he in the courtroom today?

13 A Yes.

14 Q And is he sitting here at counsel table?

15 A Yes.

16 MR. PARRISH: Could the record show
17 identification of the defendant.

18 THE COURT: It may.

19 Q Would you describe for the jury the
20 circumstances surrounding your first meeting with
21 Mr. Moore?

22 A My first meeting with Mr. Moore was in Salt
23 Lake City at his office, as I recall.

24 Q Who introduced you?

25 A Originally we were introduced by telephone

1 from a man by the name of Bruce Furst that had referred
2 us to him for the purpose of providing some interim
3 funding and hopefully some long-range funding for the
4 project that we were building in Nevada.

5 Q When you actually met face to face with
6 Mr. Moore in Salt Lake, who was present at that meeting?

7 A I don't fully recall to the best of my
8 recollection. There were several meetings, and some of
9 them I was alone and some of them there was a man named
10 Mr. Michael Howery, and there may have been some other
11 people from my office there in Salt Lake.

12 Q Did you have a business relationship with
13 Mr. Howery?

14 A Yes. Mr. Howery was on my payroll as an
15 attorney, and also as a business assistant. He also
16 handled other people's affairs, but we paid him a
17 regular retainer every month.

18 Q What was the purpose of your meeting with
19 Mr. Moore?

20 A To discuss financing for a resort that we
21 were building down on our property, our ranch property,
22 the Meadow Valley Properties in Nevada.

23 Q What did he tell you at that time?

24 A He said that he liked the property. He was
25 very enthused about it, the project, and suggested that

1 he could find the means to assist us in the funding.

2 Q As a result of the meeting with Mr. Moore,
3 did you reach an agreement with him?

4 A Originally it was my understanding that
5 Mr. Moore would provide us with some interim funding for
6 a very short period of time, 90 days, no more than 90
7 days. The figure we asked for was some \$300,000. It
8 was at a fairly high interest rate, but that was to be
9 replaced by long-term financing that he was quite
10 confident he would be able to have by the time the
11 90-day period was up.

12 Q Did you actually begin then to receive money
13 from Mr. Moore and American Factoring?

14 A Yes. I think the first increment that we
15 received was, total dollars, were some \$100- of which
16 \$40,000 went to Mr. Furst.

17 Q \$100,000?

18 A Yes.

19 Q How did things go during the 90-day period?

20 A We never did get the complete, the \$300,000
21 we were promised. We would get it in small amounts. I
22 couldn't begin to remember the amounts because I'd have
23 to see the schedule. But the schedule speaks for
24 itself, in which we received increment payments. And
25 the increment payments would go partly to us and there

1 would be deductions for the interest, which was very
2 high, monthly-type interest back to the company.

3 Q I see. Did Mr. Moore, when you talked with
4 him, explain what type of business he was involved with?

5 A Well, his company was a factoring company.

6 MR. BARBER: That's not responsive, your
7 Honor.

8 THE COURT: I believe that objection lies in
9 the mouth of the interrogator.

10 MR. PARRISH: I'll rephrase the question.

11 THE COURT: At least it did when I practiced
12 law.

13 Q (By Mr. Parrish) Mr. Wood, did Mr. Moore
14 explain to you the nature of his company? And what did
15 he say?

16 A He said that it was a financial institution,
17 the name of the company being American Factoring. That
18 he was a factoring company involved in financing of
19 different nature, different forms.

20 Q How were the moneys that were given to you or
21 advanced to you structured? What was the nature of
22 that?

23 A Well, it became notes that we signed for the
24 moneys we received.

25 Q In other words, you signed a promissory note

1 in favor of American Factoring for that money?

2 A Actually in most instances it was signed by
3 Mr. Howery, whom I had given Power of Attorney.

4 Q Did you give Mr. Moore or American Factoring
5 any collateral for the very first loans that you
6 received?

7 A Yes, we did.

8 Q What was the first collateral that you
9 advanced?

10 A We gave him an -- I had given Mr. Howery
11 authority to use our property, what I was originally
12 with the understanding, for a trust deed on our
13 property, which was about a thousand acres of land that
14 was being developed in Lincoln County at Caliente.

15 Q Was that trust deed given to American
16 Factoring?

17 A As a matter of fact, it didn't turn out to be
18 a trust deed. Somehow in the process it was a grant
19 deed.

20 Q Do you understand how that transaction came
21 about?

22 A Only to the degree that I received a phone
23 call from Mr. Howery saying that, in order to finish the
24 transaction, for reasons which he said had been
25 explained to him in part although he fully didn't know

1 but I may have signed some of the original documents.

2 Q Well, I take it that he had a Power of
3 Attorney.

4 A That is correct.

5 Q Through which he could bind the corporation?

6 A That is correct.

7 Q Could he transfer the corporation's assets
8 with that Power of Attorney?

9 A His Power of Attorney had certain
10 limitations, of which he was to report to me and confer
11 on different transactions before they did them.

12 Q Now, if you will answer my question.

13 A Sorry.

14 Q Did he have the power to bind the
15 corporation's assets.

16 THE COURT: That's a yes or no answer.

17 A I'm not sure.

18 Q What did the Power of Attorney say?

19 A I don't remember the Power of Attorney. If I
20 could see it, I could verify it.

21 Q He signed things for the company, did he?

22 A For the corporation, yes.

23 Q And with your permission?

24 A Yes.

25 Q But I'm sure that he had the obligation to

1 MR. BARBER: I have no objection. My
2 apologies.

3 THE COURT: He may be excused.

4 Call your next witness.

5 MR. HALES: The State would call Jay Dent.

6 THE COURT: How is the last name spelled?

7 MR. HALES: D-e-n-t.

8 JAY DENT

9 called as a witness for and on behalf of the plaintiff,
10 having first been duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. HALES:

14 Q Could you please state your name for the
15 record.

16 A Harold Jay Dent, Jr.

17 Q Where do you currently reside?

18 A In Salt Lake City.

19 Q Calling your attention to the years 1981
20 through 1983, what was the nature of your business
21 activities?

22 A We were in the business of real estate
23 development, speculation on unimproved property.

24 THE COURT: Would you move the microphone a
25 little closer and speak up.

1 Q What was the name of your company?

2 A The name -- we had several companies. The
3 name of the most important company was Dent &
4 Associates. We also had a corporation called Sunrise
5 West International Corporation, and a company called
6 Skyline West Financial Corporation.

7 Q And who were the principals in Dent &
8 Associates?

9 A That was a sole proprietorship owned by my
10 brother.

11 Q And your brother's name is Douglas Dent?

12 A Yes.

13 Q What about Skyline West?

14 A Douglas and I were both principals in Skyline
15 West.

16 Q And Sunrise?

17 A Yes.

18 Q It is the same, you were both principals?

19 A Correct.

20 Q What was your relationship with Dent &
21 Associates?

22 A I was an associate working for my brother.

23 Q During 1981, was Dent & Associates in a
24 position where it needed funding to carry out its
25 business?

1 A Yes, sir.

2 Q What was the funding needed for?

3 A Well, we were trying to develop some
4 unimproved property in Cedar City, Utah. And we needed
5 funds to do the development, to put in the off-site
6 improvements, and to clear a first mortgage off of the
7 property.

8 Q And how many acres did that project involve?

9 A 1280.

10 MR. HALES: May I approach the witness?

11 THE COURT: Certainly.

12 Q I'm handing what has been marked as State's
13 Exhibit 33-A.

14 THE COURT: What number is it?

15 MR. HALES: 33-A.

16 Q It's titled Joint Venture Proposal. Have
17 you seen this document before?

18 A Yes, sir, I have.

19 Q And could you tell me who prepared that
20 document?

21 A I prepared it.

22 Q And could you tell me approximately when you
23 prepared the document?

24 A Probably sometime in June of 1981.

25 Q And what was the purpose of preparing the

1 document?

2 A The purpose of preparing the document was to
3 solicit funds from a joint venture partner to join us in
4 an equity position on the real property in Cedar City.

5 Q The 1280 acres that you previously talked
6 about?

7 A That's correct.

8 Q Could you briefly describe to the jury
9 what's contained in that Joint Venture Proposal?

10 A Well, it's a proposal for an equity partner
11 to come in and advance us funds and then convert that
12 indebtedness into an equity participation after a
13 certain specific amount of time. In other words, there
14 were increments of money that were to be provided to
15 us. At the appropriate time, that debt would be
16 converted into an equity participation and we would be
17 partners. We would put up the land and the lender would
18 then convert the debt to equity.

19 THE COURT: Do you want to explain to the jury
20 very carefully and in plain English what equity
21 participation means.

22 THE WITNESS: Equity participation is like
23 having common stock in a corporation.

24 Q (By Mr. Hales) Now, does equity
25 participation in your mind differ from a loan?

1 A A loan is a debt instrument which needs to be
2 repaid. An equity participation is a partnership where
3 both partners share in the profits and the losses of a
4 corporation.

5 Q Are you familiar with Michael Moore?

6 A Yes, sir, I am.

7 Q Is he in the courtroom today?

8 A Yes, sir, he is.

9 Q Could you point him out?

10 A He is seated at the table right there.

11 MR. HALES: Could the record reflect that he
12 identified the defendant?

13 THE COURT: Yes, sir. It will do that.

14 Q How did you meet Mr. Moore?

15 A I met Mr. Moore sometime in 1959 or '60 in
16 the mission field. We were both Mormon Missionaries in
17 Great Britain.

18 Q and when was the next time you met Mr.
19 Moore?

20 A Sometime in May or June, I guess, of 1981.
21 We were introduced to him by a gentleman named Al
22 Toronto who we met through another gentleman named Larry
23 Rose.

24 Q What was the purpose of that introduction to
25 Mr. Moore?

1 A To seek some financing for our property in
2 Cedar City.

3 Q This is the same 1280 acres that you have
4 previously talked about?

5 A That is correct.

6 Q Did you have a conversation with Mr. Moore
7 with respect to this property?

8 A Yes, we did. We had a conversation with
9 respect to the property.

10 Q Where was that?

11 A At Mr. Moore's office.

12 Q Who was present?

13 A My brother, Doug, was present. I was
14 present. I believe Al Toronto was present. And let's
15 see. I can't think of anyone else who might have been
16 present at this particular time. Perhaps Millard
17 Michaelson.

18 Q When did that occur?

19 A Well, to the best of my knowledge and
20 recollection, that would have been sometime in June of
21 1981.

22 Q And what did you discuss with Mr. Moore?

23 A We discussed this Joint Venture Proposal.

24 Q And what did you seek from Mr. Moore in that
25 conversation?

1 A We sought some financing for our property.
2 We wanted to borrow some money that could be converted
3 later into a partnership.

4 Q Did you discuss with Mr. Moore what you
5 needed the money for?

6 A Yes, we did.

7 Q As a result of that meeting, did you reach
8 some type of an agreement with Mr. Moore?

9 A We agreed in principle to the terms of the
10 joint venture proposal.

11 MR. HALES: Your Honor, I would move for the
12 entering of the record Exhibit 33-A.

13 THE COURT: Any objection, Mr. Barber?

14 MR. BARBER: No.

15 THE COURT: It may be received.

16 (Whereupon, Exhibit No. 33-A was
17 admitted into evidence.)

18 Q In the course of that discussion with
19 Mr. Moore, did you have occasion to present him with a
20 copy of Exhibit 33-A?

21 A Yes, sir, we did.

22 Q Calling your attention to Exhibit 33-A, if
23 you could turn to the last exhibit, I believe it's
24 exhibit F. It's entitled Appraisal. It's the very back
25 of the document.

1 A Yes, sir.

2 Q Have you seen this document before?

3 A Yes, sir, I have.

4 Q Are you aware of who prepared it?

5 A Yes, I am.

6 Q Is this an appraisal on the same 1280 acres
7 that you previously talked about?

8 A Yes, it is.

9 Q The property that's the subject of the
10 appraisal, is that developed or undeveloped land?

11 A It's undeveloped land.

12 THE COURT: That's the land in Cedar City?

13 THE WITNESS: Yes, sir.

14 Q Now, the appraisal, itself, does it come down
15 to a conclusion as to the worth of the land?

16 A Yes. It states at that time property in fee
17 simple is valued in the sum of \$4,990,400.

18 Q Now, is that appraisal based on the property
19 as improved or unimproved property?

20 A As developed property.

21 THE COURT: Then it was not at that time
22 developed; is that correct?

23 THE WITNESS: That's correct.

24 Q Did you ever have occasion where you
25 discussed with Mr. Moore that particular appraisal?

1 A Yes, we did. We presented him with a copy
2 of the appraisal.

3 Q Did you explain to Mr. Moore that the bottom
4 line dollar amount of the appraisal was based on
5 developed land?

6 A No. I don't think that issue came
7 specifically to the foreground in our conversations. I
8 think we presented the appraisal and let Mr. Moore draw
9 his own conclusions.

10 Q Does the appraisal, itself, to the best of
11 your recollection, indicate that it's based on developed
12 land?

13 A To the best of my recollection it does.

14 THE COURT: Mr. Hales, are you sure the jury
15 understands developed and undeveloped land?

16 Q Explain for the jury, Mr. Dent, the
17 difference between developed and undeveloped land.

18 A Well, the basic difference is: Undeveloped
19 land there has been no construction and engineering on
20 the property. In the case of developed property, we
21 would have done a master plan and we would have built
22 roads and sidewalks and that sort of thing so that lots
23 could be sold individually.

24 Q Would developed land have sewer and water and
25 electricity?

1 A It could. It could also just include the
2 roads and the curb and gutter.

3 Q But this particular 1280 acres was raw land;
4 is that correct?

5 A Yes, that's correct.

6 Q Again turning your attention to Exhibit 33-A,
7 there is an exhibit in there.

8 THE COURT: Just a moment, Mr. Hales.

9 Mr. Barber, if your client and you wish a
10 conference, I'll recess for that purpose.

11 MR. BARBER: I appreciate that very much, your
12 Honor.

13 THE COURT: But the courtroom must remain
14 quite so that the jury and the witness can hear each
15 other -- I mean the jury can hear the witness and
16 counsel can hear the witness.

17 MR. BARBER: I understand.

18 Q (By Mr. Hales) Calling your attention to
19 Exhibit 33-A, do you have that?

20 A Yes, I do.

21 Q Within that document there, there is an
22 exhibit entitled Exhibit A that's MX information that
23 contains several pages of documentation about the
24 proposal to place the MX missile in Cedar City, Utah.
25 Is that correct?

1 A That's correct.

2 Q Is part of that appraisal of the property,
3 appraising it at roughly \$5 million dollars, based on
4 the idea that the MX missile will come to Cedar City,
5 Utah?

6 A Well, the appraisal is based primarily on
7 the fact that the roads and curb and gutter will be put
8 in. The marketability of the property will very much be
9 dependent on the MX.

10 Q Did you ever discuss with Mr. Moore what you
11 have just testified, that the marketability of the
12 project was dependent on the MX missile?

13 A Well, there were several factors. First of
14 all, there was a lot of oil exploration in Southern Utah
15 at that particular time. And we were of the opinion
16 that on that property or some other property close by
17 there would be some oil and gas exploration that would
18 enhance the value of the property.

19 Secondly, if the MX had been constructed in
20 Southern Utah in the Cedar City area, there would have
21 been an additional need for some 3,000 homes we
22 anticipated.

23 Q Did you discuss both of these contingencies
24 with Mr. Moore?

25 A Yes, we did.

1 Q Was he aware that both of these contingencies
2 were an essential part of the marketability of the
3 project?

4 A Yes.

5 Q Now, you testified that from 1981 to 1983 you
6 were involved with land development.

7 A Yes, sir.

8 Q Would you have characterized this joint
9 venture as a speculative venture?

10 A Yes.

11 Q Did there come a time that, as a result of
12 your meetings with Mr. Moore, that Dent & Associates
13 received money from American Factoring?

14 A Would you repeat that question.

15 Q Did there ever come a time that, as a result
16 of your meeting with Mr. Moore, that Dent & Associates
17 received money from American Factoring?

18 A Yes.

19 Q Do you recall when that happened?

20 A That would have been the first part of June
21 of 1981 -- first part of July. I beg your pardon.

22 Q And prior to receiving that money, had you
23 delivered a copy of Exhibit 33-A to Mr. Moore?

24 A Yes.

25 Q Had you had your discussions with regards to

1 Exhibit 33-A with Mr. Moore prior to receiving money?

2 A Yes.

3 Q Now, what was your understanding as the
4 basis as to the agreement that you had with American
5 Factoring for receiving the money?

6 MR. BARBER: I'm going to object without
7 foundation.

8 MR. HALES: I will withdraw the question.

9 THE COURT: You better back up on that one.
10 The objection is sustained incidentally.

11 Q (By Mr. Hales) I'm going to hand you what's
12 been marked as State's Exhibit 33, which is a collection
13 of documents. Would you briefly breeze through those
14 documents and indicate to me whether or not you have
15 seen these before.

16 THE COURT: What exhibit number is that?

17 MR. HALES: 33.

18 THE COURT: That's not in evidence yet, is it?

19 MR. HALES: No.

20 A Yes. I have seen these documents before.

21 Q Do these documents memorialize your loan
22 transactions with American Factoring?

23 A Yes, they are.

24 Q And as a result of these documents, did you
25 receive moneys from American Factoring?

1 A Yes, we did.

2 Q Do you recall how much?

3 A We received the sum of \$150,000.

4 Q And in connection with receipt of that

5 \$150,000, did you have discussions with Mr. Moore as to

6 what the relationship between Dent & Associates and

7 American Factoring would be?

8 A Yes.

9 Q And what was your understanding of that

10 relationship?

11 MR. BARBER: Objection. His understanding is

12 irrelevant. The words of Mr. Moore may be relevant.

13 MR. HALES: Your Honor, his understanding of

14 the documents is entirely relevant to this transaction

15 of him receiving the money.

16 THE COURT: It's what?

17 MR. HALES: His understanding of the

18 agreement between American Factoring which led to him

19 receiving money is relevant.

20 THE COURT: I'm going to let him answer.

21 Q (By Mr. Hales) Would you answer the

22 question.

23 A Would you restate the question.

24 Q What was your understanding of the

25 arrangement which Dent & Associates had with American

1 Factoring which led to the receipt of money?

2 A Our understanding was that we would enter
3 into a series of interest-bearing notes. And that those
4 notes would subsequently be converted into a
5 partnership, as we had outlined in the Joint Venture
6 Proposal.

7 Q Let me turn your attention to page 1 of
8 Exhibit 33.

9 A The Escrow Instructions?

10 Q No. Page 1.

11 A All right.

12 Q Which is entitled Sale and Assignment of
13 Accounts Receivable and Repurchase Agreement. And it's
14 dated July 1, 1981. Are you familiar with this
15 document?

16 A Yes, I am.

17 Q Do you know how this document was prepared?

18 A Well, it was prepared --

19 THE COURT: Just answer yes or no.

20 THE WITNESS: Oh.

21 A Yes.

22 Q And this particular document you believe
23 purports to establish that Dent & Associates has sold
24 notes to American Factoring. Isn't that correct?

25 A That's correct.

1 Q In July of 1981, did Dent & Associates have
2 any notes to sell to American Factoring?

3 A No, we did not.

4 Q Did you ever have a discussion with Mr. Moore
5 where you discussed whether or not Dent & Associates had
6 notes to sell to American Factoring?

7 A Yes, we did.

8 Q And were these discussions prior to you
9 receiving the money in the first loan?

10 A Yes, they were.

11 Q And what did you tell Mr. Moore?

12 A We told him that we did not have accounts
13 receivable.

14 Q Let me call your attention to page 7 of
15 Exhibit 33, to a document labeled Promissory Note.

16 A Yes.

17 Q Are you familiar with this document?

18 A Yes, I am.

19 Q Is this the Promissory Note which led to you
20 receiving money?

21 A Yes, it is.

22 Q Could you turn to page 9 entitled Warranty
23 Deed.

24 A Yes.

25 Q Have you seen this document before?

1 A Yes, I have.

2 Q And finally to page 5 entitled Escrow
3 Instructions.

4 A Yes.

5 Q Have you seen this document before?

6 A Yes, I have.

7 Q Specifically to the document entitled Escrow
8 Instructions, could you tell me what the purpose of
9 this document was?

10 A Well, the purpose of the document was to
11 create an escrow account whereby the collateral
12 instrument would be held in escrow and not recorded
13 until Dent & Associates should default on the loan.

14 Q And the collateral instrument you are
15 referring to is the deed which you previously
16 identified?

17 A Yes. That's correct.

18 Q And why was the Escrow Instruction entered
19 into? What was the purpose of the Escrow Instruction?

20 A Well, we were seeking financing from several
21 different sources. And we were in anticipation of doing
22 a number of promissory notes and trust deeds to
23 American Factoring. So to permit us to do our
24 financing on a first mortgage basis and to permit us to
25 not have the title encumbered by a trust deed from

1 American Factoring, because we anticipated doing a
2 number of them, the collateral instruments were held in
3 escrow.

4 Q Did you have a discussion with Mr. Moore
5 about why you wanted them held in escrow?

6 A Yes.

7 Q Could you turn to page 10 of that exhibit
8 towards the back. It purports to be a deposit slip for
9 Dent & Associates, does it not?

10 A Yes, it does.

11 Q Have you seen this document before?

12 A Yes, I have.

13 Q Does this deposit slip represent funds
14 received from American Factoring in the first
15 transaction?

16 A Yes, it does.

17 MR. HALES: Your Honor, I would move to the
18 enter Exhibit 33.

19 THE COURT: Any objection?

20 MR. BARBER: There has been no testimony
21 related to the last page of it as I have it in my book.

22 THE COURT: Are you objecting?

23 MR. BARBER: I am because of lack of
24 foundation.

25 THE COURT: As stated on the record, I'll

1 sustain the objection.

2 Q (By Mr. Hales) Turning to the last page,
3 there purports to be a check from Dent & aSsociates to
4 American Factoring dated January 25, 1982, for
5 \$104,289.84. Have you seen this document before?

6 A Yes, I have

7 Q Is this a check which Dent & Associates used
8 to pay part of the interest due in this first loan
9 transaction?

10 A That's correct.

11 MR. HALES: Your Honor, I would again move to
12 enter Exhibit 33.

13 MR. BARBER: No objection.

14 THE COURT: It may be received.

15 (Whereupon, Exhibit No. 33 was
16 admitted into evidence.)

17 Q Following this first transaction which I
18 believe the document stated occurred July 1st, did Dent
19 & Associates receive any other money from American
20 Factoring?

21 A Yes, we did. In approximately the middle of
22 July and toward the end of July we received two
23 additional loans.

24 THE COURT: What year?

25 THE WITNESS: 1982 -- 1981. I'm sorry.

1 Q Were the subsequent loans provided in
2 essentially the same way as the same documents for the
3 first loan?

4 A Yes, they were.

5 Q And in those subsequent loans, were there
6 many documents entitled: Sale and Assignment of
7 Accounts Receivable, Promissory Notes, Warranty Deeds,
8 and Escrow Instructions, as was contained in the first
9 loan?

10 A Yes.

11 Q And at the time that you entered into the
12 second and third loans, which you have testified was
13 mid-July and the end of July, did Dent & Associates have
14 notes receivable from third parties that they could
15 assign to American Factoring?

16 A No, we did not.

17 Q Did you ever have discussion with Mr. Moore
18 where you informed him that you did not?

19 A Yes, we did.

20 Q Did each of the subsequent two loans include
21 escrow instructions similar to the first loan?

22 A Yes, they did.

23 Q And what was the reason that the subsequent
24 loans had the deeds placed in escrow?

25 A For the same reason that the first deed was

1 placed in escrow. We were in anticipation of doing
2 additional financing elsewhere, and we were also in
3 anticipation of doing additional financing through
4 American Factoring.

5 Q And to the best of your knowledge, Mr. Moore
6 was aware of both of these details?

7 A Yes.

8 Q I'm handing you a document which, for
9 identification purposes, has been marked as State's
10 Exhibit 36-A.

11 THE COURT: 36-A?

12 MR. HALES: Uh-huh.

13 Q Would you take a moment to look through that
14 document.

15 Now, my understanding is that that particular
16 exhibit contains two separate documents. Is that
17 correct?

18 A It is correct.

19 Q The first one being a letter dated January
20 22, 1982 to Dent & Associates from Michael Moore. Is
21 that correct?

22 A That's correct.

23 Q And at the bottom of that letter your
24 signature appears; is that correct?

25 A Yes, it does.

1 Q The second document contained in Exhibit 36-A
2 is entitled Statement of Intent. Is that correct?

3 A That's correct.

4 Q And your testimony is that you have seen
5 these two documents before?

6 A Yes, sir.

7 Q Do you have any personal knowledge of
8 whether or not Mr. Moore has seen these documents?

9 A Yes. Both documents are signed by Mr. Moore,
10 I believe.

11 Q Did you personally discuss these documents
12 with Mr. Moore?

13 A Yes, we did.

14 Q And when did those discussions take place?

15 A These discussions would have taken place
16 during the month of January 1982.

17 Q Could you tell me who prepared the document
18 entitled Statement of Intent?

19 A I did.

20 Q And were you involved in the negotiations
21 which led to the preparation of this document?

22 A Yes, I was.

23 Q Who else was involved in those negotiations?

24 A My brother, Doug.

25 Q Was anyone from American Factoring involved?

1 A Yes. Mr. Moore and Al Toronto was there
2 present.

3 Q And what was the purpose of the document
4 entitled Statement of Intent?

5 A The Statement of Intent was to memorialize
6 our previous agreement to enter a joint venture
7 agreement.

8 Q Can I turn your attention to page 1,
9 paragraph 3 of the document entitled Statement of
10 Intent. Are you there?

11 A Yes, sir.

12 Q This paragraph deals with capital
13 contribution. Is that correct?

14 A Yes, it does.

15 Q And subparagraph A described what Dent &
16 Associates participation would be.

17 A Yes.

18 Q And subparagraph B describes American
19 Factoring's participation?

20 A Yes.

21 Q What was your understanding of what the
22 respective participation of the parties was to be?

23 MR. BARBER: Objection. Relevance, your
24 Honor. The document speaks for that understanding as
25 executed.

1 Venture Intent Agreement that we have identified as
2 Exhibit 36-A. Is that correct?

3 A That's correct.

4 Q Did this loan have anything to do with that
5 agreement?

6 A Yes, it did.

7 Q And was it connected with that agreement?

8 A This transaction was to allow us to make
9 payments on the interest that had accrued, and also to
10 give us some operating funds.

11 Q Following the transaction evidenced by
12 Exhibit No. 34, did you ever engage in any subsequent
13 transactions with American Factoring where a promissory
14 note from Sunrise to Doug Dent or Dent & Associates was
15 used as an account receivable?

16 A Yes.

17 Q When was that?

18 A Well, I can't remember specifically because
19 there were a host of transactions with American
20 Factoring. These were just the beginning of them. We
21 did probably maybe 12 to 18 different transactions with
22 American Factoring. They all followed the same basic
23 format as this transaction.

24 Q And how many of those transactions, to the
25 best of your knowledge, would have involved a promissory

1 note from Sunrise to Doug Dent or Dent & Associates?

2 A Probably the first six or so.

3 Q And in any of those promissory notes, did
4 Sunrise West ever owe Douglas Dent, yourself, or Dent &
5 Associates any money?

6 A No.

7 Q Was there ever a time when a promissory note
8 from Sunrise West to Dent & Associates or Doug Dent was
9 executed when it wasn't done under the direction of
10 Mr. Moore?

11 A No.

12 Q To the best of your knowledge, each time that
13 a promissory note was cut from Sunrise West to Dents or
14 Douglas Dent, was Mr. Moore aware that Sunrise West did
15 not owe the Dents any money?

16 A Yes.

17 Q I'm handing you what's been marked as State's
18 Exhibit 35. Getting back to that same line of
19 questioning, were there ever occasions when promissory
20 notes were cut from your other company, Skyline, which
21 purported to show debts owing from Skyline to Douglas
22 Dent or Dent & Associates?

23 A That's possible. I don't know the answer
24 specifically. I think most of them were shown from
25 Sunrise.

1 A It would have taken place on or about the
2 10th or 12th of August 1982.

3 Q Where would it have taken place?

4 A In Mr. Moore's office.

5 Q What did you tell Mr. Moore about the
6 existence or nonexistence of an account receivable or
7 note receivable in the amount of \$413,280?

8 A We would have told him we didn't have any
9 such note in existence.

10 Q Can I call your attention to the last two
11 pages of that exhibit. This is a document which you
12 have previously identified copies of in Exhibit Nos. 34
13 and 36. Is that correct?

14 A Yes, it is.

15 Q And it's a check in the amount of \$258,300 to
16 American Factoring from Dent & Associates. Is that
17 correct?

18 A That's correct.

19 Q The second part of that check has some
20 entries. Could you explain those?

21 A Well, that would explain the use of proceeds
22 from the check showing \$112,500 interest payment on the
23 \$150,000 principal from our first transaction; \$75,000
24 to reduce another interest amount; \$42,000 to pay a
25 second interest amount; and \$28,800 to pay a third

1 interest amount.

2 Q Would it be fair to say then that the entire
3 check was used to pay interest payments on loans to
4 American Factoring?

5 A That's correct.

6 Q Can I call your attention to the last page,
7 which is the copy of the back of that check. Could you
8 read the back of that check for the jury.

9 A "Pay to the order of Dent & Associates,
10 American Factoring Corporation, signed M.R.
11 Moore, president."

12 Q Could you explain what occurred?

13 A We made a payment of \$258,000, which they
14 endorsed back to us, to constitute a new debt.

15 Q So, the same check was used both for the loan
16 payment and the payment of you to American Factoring.
17 Is that correct?

18 A Right.

19 MR. HALES: Your Honor, we would move to enter
20 Exhibit 35-A.

21 MR. BARBER: No objection.

22 THE COURT: It may be received.

23 (Whereupon, Exhibit No. 35-A was
24 admitted into evidence.)

25 Q In total, approximately how much money did

1 Dent & Associates receive from American Factoring?

2 A In total, how much cash?

3 Q Yes.

4 A I don't know exactly how much cash. I would
5 say that the net net, the net cash we received, less net
6 cash that we paid back to them, would be about a half a
7 million dollars.

8 Q That's a matter of dispute in civil trial, is
9 it not?

10 A I believe it is, yes.

11 Q How much money would you say would be
12 represented by the total amount of loans that were
13 taken out by American Factoring?

14 A It could be in the neighborhood of \$5 million
15 dollars.

16 Q So somewhere between \$500,000 and \$5 million
17 dollars is the correct amount. Is that correct?

18 A That's correct.

19 Q And over what period of time was this?

20 A This would be the time frame from July 1,
21 1981 to August of 1982 approximately.

22 Q And during that time period, did you make
23 any payments of interest due to American Factoring?

24 A Yes, we did.

25 Q When you made payments to American

1 Factoring, did you ever make payments to them of moneys
2 that came from funds that weren't funds of American
3 Factoring?

4 A Yes, we did.

5 Q And in all the transactions in which you
6 were involved with American Factoring, did you ever
7 sell to American Factoring notes or accounts
8 receivables from third parties which were actual moneys
9 due to Dent & Associates from third parties?

10 A No, we did not.

11 Q Going back to Exhibit No. 36-A, which is the
12 joint venture exhibit -- not the Joint Venture Proposed
13 exhibit -- did there ever come a time when Mr. Moore
14 contacted you and told you that the agreement that's
15 outlined in Exhibit 36-A was off?

16 A I can't really remember that, counsel. I
17 don't know if he told us or if it just had a natural
18 attrition and died its own death.

19 Q And approximately what time period would it
20 have died its own death?

21 A I would guess August of 1982.

22 Q Prior to August of 1982, was it your
23 understanding that the deal was on?

24 A Yes.

25 Q And based on that understanding, how would

1 show that Dent & Associates did have receivables, didn't
2 you?

3 A Yes.

4 Q And so, what you would do is, you would come
5 down and you had another corporation down here called
6 Sunrise -- what was it?

7 A Sunrise West International.

8 Q All right. And you'd create a promissory
9 note in favor of Dent & Associates. Correct?

10 A Yes.

11 Q And you'd turn around and simply convey that
12 over to American Factoring as one of the conditions for
13 getting this money. Correct?

14 A Yes.

15 Q All right. Now, who were the signatories on
16 these promissory notes?

17 A I would have been a signatory on the
18 promissory notes from Sunrise.

19 Q That's H.J. Dent who signed some of those?

20 A Uh-huh.

21 Q All right. Now, some of those notes were
22 guaranteed, weren't they, by third persons?

23 A Well, let me think. I guess in a continuing
24 guarantee and accounts receivable statement that was
25 given, they were guaranteed, yes.

1 Q By whom?

2 A By the signatories of the Sunrise West note.

3 Q All right. Some other folks guaranteed some
4 other of your obligations, didn't they? For instance,
5 the very first one, wasn't it a note obligation of this
6 sort guaranteed by Mr. Toronto?

7 A I don't really recall that, no.

8 Q You don't recall. Was there a man named
9 Boshard involved with a company called Sunrise West?

10 A He was involved with a company called Skyline
11 West.

12 Q Skyline. I appreciate you correcting. He
13 guaranteed some of Skyline West obligations, did he not?

14 A He may have, yes.

15 Q So, there may have been cases when there
16 were guarantees of what the State here is contending are
17 meaningless obligations. Correct?

18 A That's correct.

19 Q Now, let's take a look at these notes.

20 These notes, though you say there was no underlying
21 transaction, were actually signed and executed by the
22 person making them, weren't they?

23 A Yes.

24 Q And then the guarantees in some cases were
25 also signed by the individual?

1 A Yes.

2 Q And those obligations that were signed and
3 executed represented, didn't they, legally enforceable
4 documents?

5 MR. HALES: Your Honor, I'll have to object.
6 He's calling for a legal conclusion. This witness
7 hasn't been qualified as an expert.

8 MR. BARBER: I'll make foundation.

9 Q (By Mr. Barber) What is your educational
10 background, Mr. Dent?

11 A I am a graduate of the University of Utah,
12 and a graduate of the Washington College of Law.

13 Q And you have been practicing law for several
14 years during your career, haven't you?

15 A Yes.

16 Q And during the course of that training, did
17 you learn the law of commercial transactions?

18 A Yes, I did.

19 Q All right. And as part of that law, you
20 learned the meaning of promissory notes?

21 A Yes.

22 Q Did you. And guarantees?

23 A Yes.

24 Q And the effect of the signature by a person
25 of an instrument?

1 -- as a short-term note would have been.

2 Q All right. I'll accept that for what it
3 means. It was true, wasn't it, that Mr. Moore insisted
4 that you stick to short-term paper?

5 A Yes.

6 Q Isn't it true that, during the course of your
7 relationship with him, he told you on occasions that he
8 was obliged to do that by the nature of the agreement he
9 had with the investors that gave him the money?

10 A Yes.

11 Q You knew that he was getting some of this
12 money by the sale of notes by American Factoring, didn't
13 you?

14 A Yes.

15 Q And you knew that, under the terms of those
16 notes, there had been representations about short-term
17 paper, didn't you?

18 A Yes.

19 Q And so, you tried to -- you tailored your
20 transactions as short-term paper in an attempt to meet
21 Mr. Moore's agreement to the investors?

22 A That's correct.

23 Q Now, in addition to the promissory note
24 paying double, you said that you also gave over trust
25 deeds. Is that correct?

1 A Yes, that's correct.

2 Q What is a trust deed?

3 A It's a legal interest in land represented by
4 an estate less than fee simple for -- in consideration
5 for the lending of money.

6 THE COURT: It's a security?

7 THE WITNESS: Yes.

8 Q (By Mr. Barber) In some measure it is
9 similar to a mortgage, is it?

10 A That's correct, exactly. But the manner of
11 foreclosing on it is what is different.

12 Q And it is easier, is it not?

13 A Yes.

14 Q And, in fact, you save the period of
15 redemption and some other things that are part and
16 parcel of getting mortgages?

17 A That's correct.

18 Q And it's much easier to deal with trust
19 deeds. Correct?

20 A Yes.

21 Q All right. Now, Mr. Hales has asked you
22 questions about --

23 THE COURT: I'm going to correct you. It's
24 much easier for the lender.

25 MR. BARBER: Yes. And I appreciate that.

1 Relatively less easier for the debtor.

2 Q Mr. Hales made some questions to you about
3 the fact that there were escrow agreements signed
4 related to the handling of these trust deeds. Do you
5 recall those questions?

6 A Yes.

7 Q And as I understand -- this is a matter of
8 review -- American Factoring made a deal with you in
9 which they said, Look, you give us the trust deed
10 representing an interest in the property that is
11 collateral for the loan, but we won't record that unless
12 you default in payment. Is that what they said?

13 A That's correct.

14 Q And that's the gist of these escrows
15 instructions contained in Exhibits 33, 34, 35, 35-A and
16 so forth?

17 A Yes.

18 Q All right. And you indicated I believe that
19 the reason for doing that was to leave the title
20 uncluttered so that you could go and seek additional
21 financing for the project. Is that correct?

22 A That's correct.

23 Q Now, did you ever intend to utilize the
24 property to secure additional financing without paying
25 the company's obligations to American Factoring?

1 A Well, I'm not sure I understand your
2 question. But our primary obligation was of course to
3 American Factoring to repay the loans. We did borrow
4 money from other sources. Most of that money went to
5 repay the first mortgage that was existing on the
6 property.

7 Q All right. And so what you are really doing
8 is swapping one first mortgage for another?

9 A That's correct.

10 Q But you never did intend to cheat American
11 Factoring of this money, did you?

12 A No.

13 Q And you, over a period of a year or two,
14 sought a number of methods of repaying it, including
15 some that you have described. Is that correct?

16 A That's correct.

17 Q But this business about the trust deeds was
18 not designed by you or Mr. Moore, to your knowledge, was
19 it, to facilitate cheating the investors of that
20 collateral?

21 A Absolutely not.

22 Q Now, you just indicated that you did make
23 payments on your loans.

24 A Yes, we did.

25 Q And you didn't make them all with money that

1 you got from American Factoring, did you?

2 A Well, I would say it was a rare exception
3 when we paid loans with funds from other sources. But
4 we did do it.

5 Q When you could get money, you did it, didn't
6 you?

7 A Yes.

8 Q When you could get money and pay your first
9 obligation on the property and pay your operating
10 expenses, you devoted the balance of anything you got to
11 American Factoring, didn't you?

12 A Basically, yes.

13 Q And, in fact, you continued to pay payments
14 toward American Factoring long after they quit giving
15 you money, didn't you?

16 A Yes, we did.

17 Q For a period of nearly a year?

18 A Yes.

19 Q And you paid substantial sums of money to
20 repay that indebtedness that they didn't give you,
21 didn't you?

22 A That's correct.

23 Q Now, let's talk about Exhibit 36-A, I suppose
24 it is. Do you have that in front of you, Jay?

25 A Yes, I do.

1 Q Exhibit 36-A has in it a document entitled
2 Statement of Intent.

3 A Yes.

4 Q And you've been over that in some depth with
5 Mr. Hales here, haven't you?

6 A Yes.

7 Q Is the title of that document significant in
8 any way, Statement of Intent?

9 A Well, it indicates that the transaction
10 hasn't been concluded by any means.

11 Q All right. It is just what it says it is,
12 isn't it?

13 A Yes.

14 Q An announcement of what the parties
15 anticipate may occur in the future under given
16 circumstances?

17 A Yes.

18 Q All right. Was there ever a document that
19 makes a binding obligation of the terms of this
20 agreement signed between the parties?

21 A No.

22 Q And I take it from that then, that the
23 circumstances deemed by the parties necessary never came
24 to pass. Is that correct?

25 A That's correct.

1 Q Now -- and I notice that as the first two
2 pages of that exhibit -- and incidentally, what is the
3 date of that Statement of Intent?

4 A January -- well, it doesn't have it dated on
5 the back page. It says, This Day of January 1982. It
6 would approximately have been the 20th of January, just
7 prior to Mr. Moore's letter which is part of the
8 exhibit.

9 Q Okay. Needless to say, that's where I was
10 getting to is that letter. The first page of Exhibit
11 36-A is a letter over the signature of Michael Moore
12 addressed to Dent & Associates, is it not?

13 A Yes.

14 Q And it summarized in some measure the terms
15 of this Statement of Intent, doesn't it?

16 A Yes.

17 Q But it has other terms that, as I recall, at
18 least Mr. Hales omitted to ask you about if they are in
19 there. And I call your attention specifically to one.
20 And that is paragraph 4 on the first page of that
21 letter. And I'd ask you to read that to the jury.

22 A "The principal and interest due American
23 Factoring is to be paid in full at the
24 conversion point from the proceeds of the
25 energy offering."

1 Q All right. Now, I need to ask you about
2 that. It would appear that by January 20th or so of
3 1982, Dent & Associates had probably received and had
4 outstanding nearly a million dollars in cash debt to
5 American Factoring, didn't it?

6 A Yes.

7 Q And perhaps more than that?

8 A Yes.

9 Q At that time you apparently negotiated this
10 Statement of Intent contemplating the possible joint
11 venture of your interest in the property with American
12 Factoring. Correct?

13 A Yes.

14 Q Now, was it your intention in executing that
15 agreement, which would have contemplated some conversion
16 of debt to equity on behalf of American Factoring, to
17 defeat the right of American to collect money from Dent
18 and pay the investors?

19 A No.

20 Q In fact, you did intend to provide money to
21 American in repayment of the debt so they could repay
22 their investors, didn't you?

23 A Yes.

24 Q And that was your intent from the first day
25 to the last, irrespective of any of these other interim

1 agreements, wasn't it?

2 A Yes.

3 Q During that period beginning January of 1982
4 and proceeding clear to the present, Dent & Associates
5 has been making efforts, has it not, to acquire the
6 cash to do that very thing?

7 A Yes.

8 Q And isn't it true that in the spring of '82,
9 Mr. Howery and Mr. Furst and some other individuals
10 approached Dent & Associates and said, We believe we can
11 help you arrange funding to get this deal done?

12 A Yes.

13 Q And representations were made by them to
14 Dent & Associates about the nature of that funding,
15 weren't they?

16 A Yes.

17 Q And could you describe generally what was
18 said in that respect?

19 A Well, they were dealing with a company called
20 Matco Southern California. Obviously we would have to
21 be out of our minds to pay these high interest rates
22 without the anticipation of an equity partner, and
23 that's the only circumstance under which we would have
24 proceeded with the American Factoring transaction.

25 But their indication to us was -- and there

1 was always an underlying first trust deed on the
2 property -- but their representation to us was that they
3 would pay off that first trust deed in full and become
4 our equity partners. So we entertained that idea and
5 did, in fact, do business with them.

6 Q All right. Prior to that did Dent &
7 Associates and their agents have negotiations with a
8 company called Calfarm?

9 A Calfarm was a bonding company that, in
10 addition to the collateral provided by the land, would
11 put up a bond to guarantee our indebtedness to the
12 lender, who was Matco.

13 Q All right. So that there would be a
14 guarantee of repayment?

15 A Yes.

16 Q To enhance the likelihood of getting the
17 money and likely reduce the interest rate. Is that the
18 gist of that?

19 A That's correct.

20 Q And isn't it true that there was significant
21 conversation about those alternatives at or about the
22 time you were discussing for the second time the Joint
23 Venture Agreement with American Factoring?

24 A That's correct.

25 Q In his direct examination, Mr. Hales asked

1 Q So the American Factoring debt was part of
2 the thing that caused the problem?

3 A That's correct.

4 Q And that Matco debt was undertaken in large
5 measure in an attempt to pay off American Factoring, was
6 it not?

7 A It was intended to pay off the first
8 mortgage.

9 Q Yes. Okay. And put American Factoring in a
10 first position?

11 A Put the Matco in a first position and
12 American Factoring in a second position.

13 Q All right. Other than that, it was not the
14 value of the property that caused the problem but the
15 sum of indebtedness. Is that fair to say?

16 A That is correct.

17 Q At the time when American Factoring was
18 primarily engaged in forwarding money to Dent &
19 Associates, it is your opinion, is it not, though, that
20 the value of that property was greatly in excess of
21 twice the debt?

22 A Yes. At the inception.

23 Q The property, as it sat in '81 and '82,
24 wasn't simply empty and bereft of any improvements at
25 all, was it? It had a railroad siding on it, didn't it?

1 A No. It didn't have a railroad siding on it.
2 It was toward the southwestern part of Cedar City and
3 was in the path of growth. It had access to the freeway
4 on 240 of the 1280 acres.

5 Q There was an observatory on there from CSU,
6 wasn't there?

7 A Close by.

8 Q But your purpose was to develop it as
9 commercial property and subdivisions?

10 A Right.

11 Q Now, Mr. Hales, in talking about Exhibits 33,
12 -4, -5 and -6, I suppose, was talking about the fact
13 that the purport of those exhibits is to show that
14 American Factoring loaned money to Dent & Associates
15 which was repaid immediately, given back to American
16 Factoring, in the payment of interest. Correct?

17 A The interest payments were paid back to
18 American Factoring through money that we borrowed from
19 American Factoring.

20 Q All right. You put it better than I did.

21 However, that was just not the circulation of
22 money, was it? Because in connection with the
23 transactions, Dent & Associates signed obligations to do
24 things that they would not otherwise have been required
25 to do, didn't they?

1 A Yes.

2 Q And do you recall the amount of the judgment?

3 A A million dollars approximately.

4 Q All right. Did you do that because you
5 acknowledged that the money was due and owing to
6 American Factoring?

7 A Yes.

8 Q And that, irrespective of their form, these
9 documents that we have discussed here did represent true
10 and valid debt obligations from Dent to American?

11 A That wasn't my primary reason for signing
12 the agreement.

13 Q That is nevertheless true, is it not?

14 A Apparently it is, yes.

15 MR. BARBER: That's all.

16 THE COURT: Have you concluded?

17 MR. BARBER: Yes.

18 THE COURT: Mr. Hales.

19 MR. HALES: Your Honor, can I have a
20 five-minute recess? Can I have a five-minute recess?

21 THE COURT: I always have trouble hearing
22 counsel when they address me from the chair.

23 At this time, ladies and gentlemen, we will
24 take a ten-minute recess. I remind you of my cautionary
25 instruction to you not to discuss this case until it is

1 THE COURT: Exhibits 58 --

2 MR. BARBER: I guess it's 58 through 64.

3 THE COURT: Have you examined all of them?

4 THE WITNESS: Yes, your Honor.

5 Q Do you recognize those documents?

6 A Yes.

7 Q And what are they?

8 A They appear to be promissory notes payable to

9 Sunrise West International Corporation on the part of

10 Dent & Associates.

11 Q And those are signed by Dent & Associates by

12 an individual, are they?

13 A Yes. They are signed by an individual.

14 Q And they are signed by your brother?

15 A Yes.

16 Q Do you recognize his signature?

17 A Yes, I do.

18 Q n fact, you were present when most of them

19 were signed, were you not?

20 A Probably.

21 Q And these are the very documents that were

22 given to American Factoring to represent the portion of

23 the transaction that Mr. Hales erased; is that correct?

24 A Yes.

25 Q I would move, your Honor, for the admission

1 Q And direct notes from you and your brother
2 to American Factoring?

3 A Yes.

4 Q And you indicated that on some occasions when
5 you were refactoring and agreeing to pay this additional
6 interest, there were no underlying sales or note
7 obligations assigned. Is that correct?

8 A That's correct.

9 Q And that has to do, doesn't it, with the
10 proposition that those had actually been given to secure
11 the underlying indebtedness and not so much the
12 refactored interest?

13 A Yes. That's correct.

14 Q Now, when Dent & Associates first approached
15 American Factoring, Mr. Toronto was present, wasn't he?

16 A Yes.

17 Q And at that time Mr. Moore outlined the
18 manner of doing business that he anticipated he would be
19 willing to go into. Isn't that correct?

20 A Yes.

21 Q And that involved factoring as we have
22 suggested, didn't it?

23 A Correct.

24 Q What was your brother, Douglas Dent's, and
25 your reaction to the offer of Mr. Moore?

1 A Well, the only way it would have been
2 acceptable to us is to have entered into a joint venture
3 agreement, which we were of the opinion had been the
4 basis for our doing business in the first place.

5 Q In other words, this agreement in principle
6 you were talking about?

7 A Yes.

8 Q But, in fact, you refused his offer in the
9 first instance, didn't you?

10 A I don't think so.

11 Q But in any event, by some kind of a
12 determination that you thought you could live with it,
13 you agreed to pay the kind of interest rates we have
14 talked about?

15 A Yes. We were -- yes.

16 MR. BARBER: I think that's all I have. Thank
17 you.

18 THE COURT: Do you have anything further with
19 this witness, Mr. Hales?

20 MR. HALES: Yes, your Honor. Just a second.

21 THE COURT: I'm going to ask you to confine
22 your redirect to his testimony given on surrebuttal.

23 MR. HALES: Fine.

24

25

1 REBUTTAL EXAMINATION

2 BY MR. HALES:

3 Q Mr. Barber asked you about what the
4 encumbrance on the land was before the Matco loan. What
5 was it after the Matco loan?

6 A Well, after the Matco loan, we had a \$200- --
7 I beg your pardon, \$2,400,000 debt plus the debt that
8 was owed in a second position to American Factoring.

9 Q And when was that Matco transaction, when did
10 that occur?

11 A I'm a little short on memory with respect to
12 that. But I would say it's probably around August of
13 1982, something in that neighborhood.

14 Q Why did you agree to pay the high interest
15 rate that you were charged by American Factoring?

16 A Oh, because of the equity participation that
17 we were anticipating.

18 Q Now, Mr. Barber handed you some exhibits,
19 Exhibits 58 through 64. And we have a similar exhibit
20 contained in Exhibit 34 as far as a promissory note from
21 Sunrise to Dent & Associates. That would represent
22 eight different promissory notes from Sunrise to Dent &
23 Associates. Are you aware of any others?

24 A I can't recall any others at this time.

25 Q Would it be your testimony, to the best of

1 your recollection, those eight reflect the total number
2 that were drawn?

3 A I would presume so.

4 MR. HALES: I have no further questions.

5 MR. BARBER: One moment, your Honor.

6 MR. HALES: Your Honor, one.

7 Q (By Mr. Hales) Was Mr. Moore aware of the
8 Matco transaction that you had entered into?

9 A I believe he was, yes.

10 Q And when did he become aware of that?

11 A As soon as we started the negotiating with
12 Matco.

13 MR. HALES: Thank you.

14 THE COURT: Anything further of this witness,
15 Mr. Barber?

16 SURREBUTTAL EXAMINATION

17 BY MR. BARBER:

18 Q Was Mr. Moore advised of the Matco
19 transaction contemporaneously with it occurring?

20 A Yes.

21 Q Did you do that personally?

22 A I believe I did.

23 Q The fact of the matter is you got cheated on
24 the Matco transaction, didn't you?

25 A Yes.

1 Q Matco agreed to give you more than twice as
2 much money than was actually funded, didn't they?

3 A That is correct.

4 Q And they induced you to sign a mortgage on
5 the whole property when, in fact, they funded less than
6 half of the commitment.

7 A That's correct.

8 Q And before the second portion of the
9 commitment was funded, Matco folded, didn't it?

10 A Yes.

11 Q Isn't it true that you intended to use
12 portions of the Matco obligations that they finally
13 cheated you on to pay American Factoring?

14 A Yes.

15 THE COURT: Aren't going a little ways beyond
16 the last direct examination of this witness?

17 MR. BARBER: I think not. He raised the Matco
18 transaction.

19 THE COURT: Are you concluded?

20 MR. BARBER: I am done.

21 THE COURT: Are you concluded, Mr. Hales?

22 MR. HALES: I am done.

23 THE COURT: You may step down. Call your next
24 witness.

25 MR. HALES: Blank Heiner.

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BLAKE HEINER

called as a witness for and on behalf of the plaintiff,
having first been duly sworn, was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. HALES:

Q Could you please state your name for the
record.

A Blake Heiner.

Q Where do you currently reside?

A In Salt Lake City.

Q Could you describe for the jury your formal
educational background?

A Graduate of Bountiful High School, attended
and graduated from the University of Utah and University
of Utah College of Law.

Q Are you a member of the Utah Bar?

A Yes.

Q Since graduation from law school, what has
been your employment or occupation?

A I have been employed in the title insurance
business in Salt Lake City, employed by Guarantee Title
Company from 1978 to '82, and by Associated Title
Company from thence to the present.

Q Turning your attention to the specific time

1 Q Do you recall having seen this document?

2 A Yes.

3 Q Is that your signature on the second page of

4 those escrow instructions?

5 A It is.

6 Q Do you recall what your duties were under

7 the escrow agreement?

8 A There were certain documents that were

9 delivered to be held in escrow. And the Warranty Deed

10 that was being held in escrow was to be recorded upon

11 instructions from Michael R. Moore on behalf of American

12 Factoring.

13 Q Okay. Were you involved in subsequent

14 transactions between these two parties where similar

15 escrow instructions were delivered to you?

16 A Yes. I can't say whether they were

17 subsequent or preceded this. But yes, sir, there were

18 other transactions.

19 Q Were the documents used in the other

20 transactions substantially identical to the escrow

21 instructions that you have just read?

22 A Yes.

23 Q Did you ever have instructions from anyone

24 to record these deeds?

25 A No.

1 Q To the best of your knowledge, were these
2 deeds ever recorded?

3 A No.

4 Q Based upon your experience as a title agent
5 and your background as an attorney, could you give the
6 jury an opinion as to the legal effect of holding the
7 deed in escrow rather than recording it?

8 A Well, the effect would be that the property,
9 legal title to the property, would remain in the
10 original owner, grantor in this case, which would be
11 Dent & Associates, and would enable Dent & Associates to
12 continue to deal with that property for using it as
13 collateral for further financing or sale or anything
14 else they wanted to do with it without the encumbrance
15 or the transfer of title.

16 THE COURT: They could pass that escrow deed,
17 and the deed wouldn't mean a thing, would it?

18 THE WITNESS: That's correct.

19 Q Based upon your opinion again, what is the
20 difference in protection afforded a lender who places
21 the deed in escrow as opposed to a lender who has the
22 deed recorded?

23 A If the deed is placed into escrow, there is
24 basically no protection for the lender. The owner of
25 the property, as I say, could pledge the property as

1 security for other financing or do anything else with
2 it. And any third party with whom that person dealt
3 would have no knowledge of this transaction.

4 Q As opposed to someone who had the deed
5 recorded, what protection would they have?

6 A They would have the fact that, once it's
7 recorded, then all third parties are considered to have
8 constructive knowledge of the contents of the document.

9 THE COURT: That's notice to the world, isn't
10 it?

11 THE WITNESS: Exactly. And they would be
12 considered to be subject to the effect of the recorded
13 document.

14 MR. HALES: I don't have any further
15 questions.

16 THE COURT: Mr. Barber.

17 MR. BARBER: Thank you.

18 CROSS EXAMINATION

19 BY MR. BARBER:

20 Q Mr. Heiner, when Mr. Hales asked you about
21 the effect of an unrecorded deed, such as is the case
22 here, that deed purported to convey full title to the
23 property to American Factoring, didn't it?

24 A The one in this set of escrow instructions,
25 yes.

1 Q And assuming that that was held as
2 collateral, they would not have had to foreclose or
3 anything to perfect their right to the property any time
4 they recorded that deed, would they?

5 A When you say "they," who do you mean?

6 Q American Factoring.

7 A That's correct.

8 Q By merely instructing you to go over and
9 record it and stamp it, American Factoring would have
10 owned the property outright?

11 A That's correct.

12 Q Subject to any prior indebtedness?

13 A Correct.

14 Q It is not quite true that this document has
15 no legal effect, though, is it?

16 A Well, it does have legal effect certainly as
17 between the parties to the document.

18 Q All right. As between American Factoring and
19 Dent & Associates, it represented a conveyance of all of
20 Dent & Associates' title to the property to American
21 Factoring, didn't it?

22 A Correct.

23 Q And it was only as to third parties that the
24 recording was of any significance?

25 A Correct.

1 Thank you, Mr. Heiner. You may step down.

2 You may call your next witness.

3 MR. HALES: Can the witness be excused?

4 MR. BARBER: I have no objection.

5 THE COURT: You are excused, Mr. Heiner.

6 MR. PARRISH: Your Honor, the State calls

7 Michael Howery.

8 THE COURT: Spell the last name.

9 MR. PARRISH: H-o-w-e-r-y, is my
10 understanding, your Honor

11 MICHAEL HOWERY

12 called as a witness for and on behalf of the plaintiff,
13 having first been duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. PARRISH:

17 Q Would you state your full name, please.

18 A Willard Michael Howery.

19 Q Would you spell your last name for us?

20 A H-o-w-e-r-y.

21 Q Where do you reside, sir?

22 A In Salt Lake City.

23 Q How long have you resided there?

24 A Twenty years.

25 Q And what's your profession?

1 A I am an attorney.

2 Q How long have you been an attorney?

3 A Fifteen years.

4 Q Are you acquainted with Mr. Mark Wood?

5 A Yes.

6 Q And how are you acquainted with him?

7 A I have been employed by Mr. Wood in a couple
8 of his companies.

9 Q Are you still his employee at this time?

10 A No.

11 Q How would you describe the nature of that
12 employment with Mr. Wood?

13 A It varied. Initially I was employed to do
14 some marketing for one of his companies in California.
15 Then I was employed in a Salt Lake company which was a
16 production company of master works.

17 Q Can everybody hear Mr. Howery? He is kind of
18 pointed towards me I notice.

19 Calling your attention to the period of time
20 between 1981 and 1983, were you in that relationship
21 with Mr. Wood during that period of time?

22 A Yes, uh-huh.

23 Q What authority did you have on Mr. Wood's
24 behalf.

25 A Teleproductions, which was the local company,

1 I was in charge of the office. And some of his
2 borrowings, he had allowed me to -- gave me a Power of
3 Attorney to help with local borrowing because he was in
4 California.

5 Q For the benefit of the jury, would you
6 explain what a Power of Attorney means?

7 A Power of Attorney, in fact, is a document
8 which allows a person to act in the ways specified in
9 the document for another person legally.

10 Q In other words, you can sign his name and
11 bind him to obligations, things of that nature?

12 A Yes.

13 Q Are you also acquainted with Mr. Michael
14 Moore?

15 A Yes.

16 Q How did you first become acquainted with him?

17 A Through Mr. Wood.

18 Q I see. Were there dealings between Mr. Wood
19 and Mr. Moore that you were a part of?

20 A Yes.

21 Q Would you describe the nature of those?

22 A Initially some loans were made to Mark Wood
23 and through Teleproductions, his company, through an
24 American Factoring Company, some moneys were advanced.
25 And I was instrumental in signing some of the documents

1 and arranging for those loans.

2 Q What was the nature of those documents that
3 you executed?

4 A As I recall, the documents that American
5 Factoring prepared consisted of a continuing guarantee
6 and assignment of accounts receivable, and usually a
7 promissory note.

8 Q And did you sign those documents?

9 A I think I signed most of them, yes.

10 Q And was that on behalf of Mr. Wood?

11 A Yes.

12 Q Each time that those documents were signed,
13 would money be advanced to Mr. Wood? Was that the way
14 the transactions occurred?

15 A Yes.

16 Q When you say that there was assignment of
17 accounts or notes receivable, were any accounts or notes
18 receivable from Mr. Wood or Teleproductions actually
19 given to American Factoring for collection?

20 A There were accounts receivable pledged as
21 collateral for the funds, yes.

22 Q Let me show you what's been marked and
23 received into evidence as State's Exhibit 32 and ask if
24 you recognize those documents?

25 A These are a series of promissory notes which

1 were owed to Mr. Wood through one of his companies, yes.

2 Q Are those the notes that you are referring
3 to?

4 A Yes. These were pledged as collateral to
5 American Factoring.

6 Q Any other notes or accounts receivable that
7 you know of?

8 A There was a note from a Mr. Bruce Furst to
9 Teleproductions that was used as collateral for the
10 initial transaction.

11 Q Was that a note that purported to indicate
12 that Mr. Furst owed Teleproductions money?

13 A Yes.

14 Q Other than that note and these notes, were
15 there any other accounts or notes receivable used in
16 these transactions?

17 A No.

18 Q Were there some transactions where there were
19 documents signed, assignment of accounts receivable,
20 where, in fact, there were no accounts receivable
21 transferred?

22 A Yes.

23 Q Approximately how many of those would there
24 have been? How many separate transactions?

25 A I'm not sure. I would think the second,

1 third, fourth and fifth transactions, something like
2 that, were pledged with some real property which
3 Mr. Wood's company owned in Nevada.

4 Q What was the effect of the documents that you
5 signed on behalf of Mr. Wood when there was no
6 underlying promissory note involved or account
7 receivable or note receivable?

8 A Okay. There was usually a note. The
9 document provided for a discounted amount to be provided
10 to Mr. Wood, and either a 90- or 120-day period in which
11 that needed to be repaid.

12 Q I assume then that you would sign a
13 guarantee that that would be paid on behalf of Mr. Wood?

14 A Yes. There was a continuing guarantee that
15 Mr. Wood had signed which would cover everything that he
16 did anyway.

17 Q I see. And that was the equivalent of a
18 promissory note from Mr. Wood to American Factoring?

19 A Yes.

20 Q I see. Let me show you you, Mr. Howery,
21 what's been received into evidence as State's Exhibit
22 27, and ask if you recognize that document?

23 A This is a Grant Deed executed January 4th by
24 me and behalf of Mr. Wood.

25 THE COURT: January 4th what year?

1 THE WITNESS: I'm sorry. January 4th of 1982,
2 pledgeing part of the real property of Mr. Wood's ranch.

3 Q (By Mr. Hales) And is there another grant
4 deed in that packet?

5 A There is a correction deed increasing the
6 acreage, yes.

7 Q Did you sign the correction deed as well?

8 A Yes. That's my signature.

9 Q Your signature appears on both deeds; is
10 that correct?

11 A Yes.

12 Q And it's for Mr. Wood?

13 A Yes, sir.

14 Q How many acres are involved in the first
15 deed?

16 A The initial deed was for 320 acres of the
17 1200. And the correction deed was for 700 acres of the
18 1200.

19 Q Now, on the correction deed who was the
20 grantee, or the person who receives the property?

21 A The property was granted on the correction
22 deed to American Factoring.

23 Q And if you would look at the front deed
24 there, the first page of that document, who is the
25 grantee or the person who receives that property?

1 A That's correct.

2 Q And that's in 27.

3 THE COURT: Did you execute that deed?

4 THE WITNESS: I signed that deed without it
5 being pledged.

6 THE COURT: Was the name Lanseair on it?

7 THE WITNESS: No, sir.

8 THE COURT: Do you usually sign deeds that
9 way?

10 THE WITNESS: Well, I'm having a hard time
11 recalling. I think that American Factoring's name was
12 on it, but it could have been in blank.

13 Q (By Mr. Barber) All right. But in any
14 event, if you look at 27 there, which you signed, it
15 purports to convey 300 acres to Lanseair. And you don't
16 know anything about that. Right?

17 A No.

18 Q But if you look at Exhibit 28, what we have,
19 isn't it, is a deed from Lanseair to American Factoring
20 of the same 300 acres. Right?

21 A That's true.

22 Q So, what, in effect, happened, irrespective
23 of the form of the deeds, is that American Factoring
24 ended up with the property from Meadow Valley. Is that
25 correct, according to those deeds?

1 THE COURT: Are you concludeed with this
2 witness?

3 MR. PARRISH: Yes, your Honor. Nothing
4 further of this witness.

5 THE COURT: Are you through you, Mr. Barber?

6 MR. BARBER: I am through.

7 THE COURT: Thank you, Mr. Howery. You are
8 excused -- or wait a minute. I don't know if you are
9 excused or not.

10 THE WITNESS: Am I excused?

11 MR. PARRISH: Yes, as far as I am concerned.
12 May the witness be excused, Mr. Barber?

13 MR. BARBER: Yes.

14 THE COURT: Call your next witness.

15 MR. PARRISH: The State calls Paul Jeppsen.

16 PAUL JEPPSEN

17 called as a witness for and on behalf of the plaintiff,
18 having first been duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. PARRISH:

22 Q Would you please state your full name for the
23 record.

24 A My full name is Paul Norman Jeppsen.

25 Q Could you please spell your last name for us.

1 Lee Fiet. And I just called up and made an appointment
2 with Mr. Moore. And it was just he and myself.

3 Q Where was that?

4 A That was at the office that they had in Salt
5 Lake.

6 Q What was the name of his business?

7 A American Factoring.

8 Q Did Mr. Moore in that meeting describe to
9 you the nature of his business?

10 A Yes.

11 Q What did he say?

12 A The nature of the business at the time was
13 that they had accounts receivable that they would
14 purchase, and then collect the money, and they would
15 discount 10 percent on the note.

16 Q Did he talk about any other nature of
17 American Factoring's business?

18 A At that time I approached Mr. Moore to see if
19 he was interested in investing money with Mr. Bogart,
20 and then began to talk to him about that.

21 Q Did Mr. Moore tell you where he was getting
22 the money to do the factoring business?

23 A He just generalized. Basically he had
24 investors of people that were investing money. We went
25 from his office that day, we went to Provo. He was

1 picking up some checks. And he picked some checks up
2 from some other people and introduced me to a gentleman
3 by the name of Al Toronto.

4 Q Did you at some point arrange for Mr. Bogart
5 and Mr. Moore to meet with each other?

6 A Yes.

7 Q Approximately when did that occur?

8 A Approximately just a couple of weeks to a
9 month after my first meeting with Mr. Moore.

10 Q Sill in 1981?

11 A Yes.

12 Q Were you present at the first time that
13 Mr. Bogart and Mr. Moore met?

14 A Yes.

15 Q And where was that?

16 A That was in the American Factoring's office.

17 Q Could you name all the people that were
18 present that you recall?

19 A There was Mr. Moore and myself and Lynn
20 Bogart for a good part of the morning. And then later
21 on Mr. Moore invited Millard Michaelson into the meeting
22 as well.

23 Q Do you recall what was discussed during
24 those meetings?

25 A The meeting was, Mr. Bogart told Mike just

1 basically what he was doing, what he wanted money for.
2 What he was looking for was to purchase real estate at a
3 sheriff's sale, whatever. He was buying real estate at
4 a discounted price, and then able to go around and to
5 refinance the property and then sell the property for no
6 down payment.

7 Q Okay.

8 A But what he needed an investor for was to
9 purchase the title or whatever needed to be done at the
10 sheriff's sale.

11 Q What did Mr. Moore say during that meeting?

12 A He was interested in having Mr. Bogart pursue
13 finding, presenting some properties to him so that they
14 could put something together.

15 Q Was there any discussion that you recall in
16 that meeting about accounts or notes receivable that
17 Mr. Bogart may have?

18 A During the meetings there may have been some
19 questions. Because at the time Mr. Bogart was the
20 president of Lanseair Corporation, he had properties
21 that -- I guess I'm forgetting your question.

22 Q The question was, in that first meeting
23 between Mr. Moore and Mr. Bogart, were there discussions
24 about accounts and notes receivable?

25 A Yes, that's right. They wanted to know if

1 Lynn had any notes or promissory notes that would be due
2 to him so that they could factor. And we also -- and I
3 can't remember if it was the first meeting or maybe just
4 one meeting after -- there was a concern as to how they
5 could invest money or give money to Mr. Bogart so that
6 it would be shown that it was factored.

7 Q Who expressed that concern?

8 A Mr. Moore. He had called -- and I'm thinking
9 it was either an attorney or a CPA. McGavin is the name
10 that seems to stick in my mind -- as to how this would
11 be done.

12 Q I see. Now, you mentioned a business called
13 Lanseair. What do you know about how Lanseair was
14 created?

15 A Lanseair was created by Mr. Bogart. And he
16 had his wife, Karen Scoville, and his brother-in-law,
17 Mike Brady, as officers of the company. I was -- I
18 can't remember the name. I signed on the back of it as
19 an -- I think it was as a resident.

20 Q Was that in connection with the incorporation
21 of the company?

22 A Yes. I was an incorporator of the company.

23 Q Okay. To your knowledge what was Lanseair
24 set up to do?

25 A Lanseair, as far as I knew -- well, at the

1 time I thought it was a big real estate company that had
2 a lot of assets and property.

3 Q To your knowledge, did it ever engage in any
4 shipping business?

5 A To my knowledge, no.

6 Q To your knowledge again, did Lanseair ever
7 have any notes receivable or accounts receivable?

8 A As I more so understand, the majority of the
9 notes --

10 MR. BARBER: Objection, your Honor. We don't
11 have the source of any of the foundation to this answer.

12 THE COURT: I think you better lay better
13 foundation, Mr. Parrish.

14 MR. PARRISH: Thank you, your Honor.

15 Q (By Mr. Parrish) Were you familiar with the
16 day-to-day operations of Lanseair?

17 A As I look back at it, no. At the time I
18 thought I was, yes.

19 Q Concerning the relations between Mr. Moore
20 and American Factoring and Lanseair, did there come a
21 time when American Factoring loaned Lanseair money, to
22 your knowledge?

23 A Yes.

24 Q Approximately how long after that first
25 meeting between Mr. Bogart and Mr. Moore was that?

1 A I'm thinking of just a couple of weeks.

2 Q Were you personally involved in some of
3 those transactions?

4 A I was.

5 Q What part did you play?

6 A At the time I had represented Mr. Bogart. I
7 had signed on some of the notes.

8 Q And by notes, what do you mean?

9 A Some of the promissory notes which Mr. Moore
10 had us sign in regards to money that would be going to
11 Lanseair.

12 Q How were those, as you call them promissory
13 notes, structured? What was the title of those
14 documents, if you remember?

15 A A lot of those notes at that time, a
16 majority of the notes were made up in the office of
17 American Factoring.

18 Q And were they assignments of accounts
19 receivable?

20 A To my knowledge, no.

21 Q What were they?

22 A The major concern at this time was that there
23 was property that would back up the notes, that would
24 secure the notes.

25 Q So, They were just promissory notes from you

1 or Mr. Bogart to American Factoring. Is that your
2 testimony?

3 A Yes.

4 Q Was there a time when the transactions began
5 to include assignment of accounts receivable, sale and
6 assignment of accounts receivable?

7 A They were supposed to. But I don't ever
8 recall seeing it, other than just the real estate,
9 itself, being assigned over.

10 Q Mr. Jeppsen, let me show you what's been
11 admitted at State's Exhibit 40. If you would look at
12 that document. Are you familiar with that?

13 A The Continuing Guarantee of Payment, yes.

14 Q And does your signature appear on that first
15 page?

16 A It does.

17 Q Would you turn to the next document in the
18 sequence?

19 A Uh-huh.

20 Q What is that?

21 A That's a Sale and Assignment of Accounts
22 Receivable and Repurchase Agreement.

23 Q Does your signature appear on that document?

24 A It does.

25 Q Is that the type of document that you are

1 talking about?

2 A Yes.

3 Q Were these used in virtually every loan that
4 was given to Mr. Bogart?

5 A Yes.

6 Q The document you are currently looking at,
7 that being the Sale and Assignment of Accounts
8 Receivable, appears to reference some invoices. Do you
9 know anything about those invoices?

10 A The invoices that are here would be the
11 ones. That I would need to see them if I could.

12 Q Why don't you turn to the back of that packet
13 and see if you can find some invoices.

14 A Yes.

15 Q Have you seen invoices such as those before?

16 A Yes, I have.

17 Q Are you familiar with how those invoices were
18 created?

19 A Yes. They were made up in American
20 Factoring's office.

21 Q What do they purport to indicate?

22 A That due you for services rendered, that
23 there would be a \$27,000 fee that would be owed. This
24 shows that was of Lanseair, and it was sold to Mr. Lynn
25 Bogart.

1 Q So, who owes the money and who is the money
2 owed to, according to that invoice?

3 A This invoice here, to me, it would be like
4 Lanseair would be paying Mr. Bogart.

5 Q I see. To your knowledge did that invoice
6 represent any true account receivable or note
7 receivable.

8 MR. BARBER: I'm going to object to the form
9 of the question. Without foundation we don't know if he
10 knows anything about that.

11 THE COURT: He may answer yes or no.

12 Do you understand the question?

13 THE WITNESS: I do.

14 THE COURT: You may answer yes or no.

15 Q (By Mr. Parrish) To your knowledge, do you
16 know if that represents an accurate account or note
17 receivable?

18 THE COURT: Or if you don't know, you may say
19 so.

20 A I want to say that, no, it doesn't.

21 Q You have no knowledge of it. Is that what
22 you are saying?

23 A I'm saying that I don't feel that there was
24 at that time, that there was -- this money was being
25 owed.

1 MR. BARBER: Objection. Foundation.

2 THE COURT: I'll sustain that objection.

3 THE COURT: You shouldn't volunteer,
4 Mr. Jeppsen. If you don't understand the question, tell
5 me. If you do and you know the answer, give it. If you
6 do or you don't know the answer, don't give a narrative.

7 THE WITNESS: Okay.

8 Q (By Mr. Parrish) Tell me how the invoices
9 were created and where they were created.

10 A The invoices -- the question that Mr. Moore
11 had with Mr. Bogart was how you --

12 MR. BARBER: Objection. That has nothing to
13 do with the question,

14 THE WITNESS: It is how they were created.

15 MR. BARBER: He is volunteering again. If the
16 reporter will read back the question, the court will
17 understand.

18 THE COURT: Just a minute. I assume, as far
19 as the law is concerned, this man is a layman. And he
20 is trying to explain his answer to Mr. -- to counsel's
21 question.

22 Is that what you are doing?

23 THE WITNESS: Yes. He asked how the note was
24 created. And I just wanted to tell you how the note was
25 created.

1 MR. BARBER: What he did, your Honor -- if the
2 Court wants to review the transcript -- what he went
3 on to do was explain some problem between Mr. Bogart and
4 Mr. Moore. That had nothing to do with an invoice
5 created.

6 THE COURT: I'll order that portion of his
7 testimony stricken and instruct the jury to ignore it.

8 MR. BARBER: Thank you, your Honor.

9 MR. PARRISH: Let's try that again.

10 Q (By Mr. Parrish) What we are interested in
11 is how the invoicess were created, just the process that
12 was gone through to create the invoices.

13 A The invoice was typed up in Mr. Moore's
14 office.

15 Q Who did the typing?

16 A I had done some myself. And his secretary,
17 Cindy, had done some.

18 Q Anybody else?

19 THE COURT: If you know.

20 A That I know of, no, none others.

21 Q That's all I am asking is what you are aware
22 of or remember. What about the factoring agreements,
23 where were they prepared?

24 A They were prepared in American Factoring's
25 office.

1 Q And again, we are talking about the sale and
2 assignments of accounts receivable?

3 A Yes.

4 Q Like the one you have testified about?

5 A Yes.

6 Q Who gave the information to be typed onto
7 those invoices?

8 A Mr. Moore gave the information to Mr. Bogart
9 as to what needed to be done.

10 Q When you typed the invoices for the ones that
11 you did, who gave you the information to put on the
12 invoices?

13 A At that time Mr. Bogart gave me the
14 information.

15 Q Did you ever have any conversations with
16 Mr. Moore in which he indicated he knew that these
17 invoicess did not represent a true account receivable?

18 MR. BARBER: I'm going to object to that
19 statement. We haven't got any evidence about whether
20 they were or not.

21 I object to the form of the question. There
22 is no evidence about whether he knows whether they were
23 valid or not.

24 THE COURT: Will you restate the question,
25 Mr. Parrish.

1 MR. PARRISH: Yes. The question, your Honor,
2 was:

3 Q To your knowledge, was there ever any
4 conversation that you were privy to where Mr. Moore
5 acknowledged that these invoices were not true accounts
6 receivable?

7 THE COURT: Now, when he says were you privy
8 to, that means were you in on it.

9 A No, sir.

10 Q You never heard him acknowledge that?

11 A No, sir.

12 Q Thank you. That's all the question asks
13 for. As to these invoices, who decided what date to put
14 on those invoices?

15 A I really don't know. The dates were given to
16 me. The ones that I typed up, I was told by Mr. Bogart
17 as of the dates.

18 Q And again, this is always done at American
19 Factoring's offices?

20 A Yes.

21 Q To your knowledge were any of the invoices
22 ever backdated?

23 A Yes, they were.

24 Q By that we mean dated prior to the time of
25 the agreement?

1 A Yes, sir.

2 Q Mr. Jeppsen, do you know about the payment of
3 money from Lanseair to American Factoring? Were you
4 involved in any of that?

5 A I am familiar with some of it, yes.

6 Q To the extent of your knowledge, did Lanseair
7 or Mr. Bogart ever pay back any money out of Lanseair
8 funds?

9 A Out of the Lanseair checking account, yes,
10 they paid to American Factoring.

11 Q What was the source of the money that went
12 into the Lanseair account?

13 A The source of the money that went into the
14 account was from American Factoring.

15 Q Any other source?

16 A None that I am aware of.

17 Q Thank you.

18 MR. PARRISH: I have no further questions,
19 your Honor.

20 THE COURT: Mr. Barber.

21 MR. BARBER: Would this be a convenient time
22 to take the afternoon recess?

23 THE COURT: At this time we will take a
24 ten-minute recess. I again issue my previous caution
25 not to discuss this case with anyone or come to any

1 Q How did Bogart present himself to Mr. Moore?
2 What did he say about his wealth or background and the
3 other business things that would suggest that he might
4 be a proper target for a loan?

5 A Well, Mr. Bogart, I had always assumed he
6 could turn straw into gold.

7 Q That he could what?

8 A That he could turn straw into gold. He
9 presented himself as somebody who was able to do a lot
10 of business.

11 Q As a virtual wizard in real estate. Isn't
12 that about what he said?

13 A Yes, sir.

14 Q And he had paper to back that up?

15 A He had some papers, yes.

16 Q He had appraisals and project reports and
17 that sort of thing?

18 A Yes.

19 Q And did you have an opportunity to review
20 that material?

21 A I had seen it, yes.

22 Q It looked pretty good, didn't it?

23 A Yes, sir.

24 Q It looked as if Mr. Bogart was a man of
25 substance, didn't it?

1 A Yes.

2 Q And skill?

3 A Yes, sir.

4 Q And acumen?

5 THE COURT: Do you know what that means?

6 Q Well, never mind that. We don't need to gild

7 the lily. He looked like a pretty smart dude, didn't

8 he?

9 A He did.

10 Q That's what he said to Mr. Moore effectively,

11 didn't he?

12 A Yes.

13 Q Now, when Mr. Bogart presented himself to Mr.

14 Moore, did Mr. Moore tell him that he wanted to

15 structure whatever transactions that they did as

16 factoring transactions?

17 A I guess. I don't understand.

18 Q Was there any talk about factoring?

19 A There was.

20 Q Did that occur at the first meeting?

21 A They talked about what needed to be done so

22 things would look as if they were factored, yes.

23 Q And during the portion of that, any portions

24 of those conversations at which you were present, what

25 did Mr. Bogart say and what did Mr. Moore say?

1 A They had talked or wanted to talk to
2 somebody who could tell them what needed to be done so
3 that their notes and documents would look like they were
4 factoring and not making a loan.

5 Q So they would be structured as factoring
6 transactions as opposed to a straight loan?

7 A Yes.

8 Q What did Mr. Moore do to find that out?

9 A He contacted -- and I hope I am saying the
10 right name in Mr. McGavin. I can remember where his
11 office was.

12 Q Where was it?

13 A It was on 5th East and roughly Second South
14 in Salt Lake City.

15 Q Was he a professional of some sort?

16 A He was of some sort, yes.

17 Q Lawyer and accountant?

18 A Lawyer or accountant.

19 Q All right. And to your knowledge, did
20 Mr. Moore follow his advice in structuring the
21 transaction?

22 A When we went into the meeting, Mr. Moore knew
23 that it was to be a loan to Mr. Bogart. And we went to
24 this particular gentleman's office so that it would be
25 structured as factoring, yes.

1 Q And was the form of the documentation that
2 suggested by the professional?

3 A They said they needed to have a note
4 receivable or an invoice.

5 Q Okay. And that's what Mr. Moore did, isn't
6 it?

7 A Yes.

8 Q And the individual who gave that advice knew
9 the circumstances of the transaction at the time he gave
10 the advice?

11 MR. PARRISH: That goes a little too far.

12 Q Were you there?

13 MR. BARBER: I'll withdraw that.

14 A I wouldn't say he knew everything.

15 Q Were you there?

16 A Yes, I was.

17 Q Did you hear what Mr. Moore and Mr. Bogart
18 told him?

19 A That they wanted to make a loan from American
20 Factoring to Mr. Bogart so that they could have -- they
21 wanted it to be factored.

22 Q And he instructed them to structure it on
23 the basis of some kind of a third-party obligation?

24 A He instructed them that they had to have an
25 invoice or an account receivable of some sort.

1 THE COURT: Very well. Proceed.

2 LYNN BOGART

3 called as a witness for and on behalf of the plaintiff,
4 having first been duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. PARRISH:

8 Q Would you please state your full name for the
9 record, sir?

10 A Yes. It's Lynn Bogart.

11 Q And where do you currently reside?

12 A In Arizona.

13 Q And where is that in Arizona?

14 A Federal Correctional Institution; Phoenix,
15 Arizona.

16 Q What's the cause of your incarceration, sir?

17 A I pled guilty to mail fraud in San Diego.
18 And I'm serving five years on that.

19 Q Is there anything else that you are serving
20 time for?

21 A Yes. A probation violation, also five years.

22 Q And what did that have to do with?

23 A 18 U.S.C. -- I don't remember the code.

24 Q Just in layman's terms what type of a
25 situation?

1 A Government obligations.

2 MR. BARBER: What is it?

3 THE WITNESS: Government obligations.

4 Q Mr. Bogart, have there been any promises or
5 threats made to you in exchange for your testimony in
6 this case today?

7 A No, there hasn't.

8 Q What do you expect to receive or to happen
9 if you do testify in this case?

10 A I don't believe there is anything that can
11 be done for me in this case. I might ask for a letter
12 or something at a later date.

13 THE COURT: From whom?

14 THE WITNESS: From the government -- or the
15 State, I guess, in this case. But there has been
16 nothing promised to me.

17 Q (By Mr. Parrish) You have not been promised
18 any reduction of your sentence?

19 A No. There is no way you could do that.

20 Q Let me call your attention to the years 1981
21 through 1983. What was the type of business you were
22 involved in at that time?

23 A Purchasing property for the purpose of
24 reselling it.

25 Q What type of property?

1 A Residential and commercial.

2 Q Was this a normal real estate business, or

3 was it something different?

4 A Normal.

5 Q We have had testimony that you were involved

6 in dealing with distressed properties. Is that an

7 accurate way to characterize your business?

8 A Yes. That would be accurate, I would say.

9 Q What would distressed mean to you?

10 A Well, distressed would be a property that you

11 can take over for very little down. It's encumbered.

12 Pretty much all of the equity is encumbered out of it.

13 Q What are you trying to do to make money?

14 A Basically tie the property up and get it into

15 a holding company and hold it until the interest rates

16 change or the the economy changes where you can sell it

17 for a profit at that time.

18 Q Do you have a need for funding to carry on

19 that business?

20 A That's true, yes.

21 Q And where do you usually get that kind of

22 money?

23 A Private individuals mainly. Investment

24 funds.

25 Q Were you acquainted with Mr. Paul Jeppsen?

1 A Yes, I am.

2 Q What was your relationship with Paul Jeppsen?

3 A Paul and I attempted to -- at one time we

4 were going to go ahead and work on some properties. I

5 was working on some down in California, and he was going

6 to work on some in Utah. I didn't think he ever got any

7 in Utah though.

8 Q Did you at some point ask Mr. Jeppsen to

9 find sources of money for you?

10 A Yes.

11 Q And did he do that?

12 A Yes, he did.

13 Q Are you familiar with Mr. Michael Moore?

14 A Yes, I am.

15 Q And I assume you could identify him as being

16 present today.

17 A Yes. He's present.

18 Q And would you point him out for us.

19 A The gentleman on the left side of the table

20 there, to my left.

21 MR. PARRISH: May the record indicate

22 identification.

23 THE COURT: It may so reflect.

24 MR. BARBER: Thank you, your Honor.

25 Q (By Mr. Parrish) How did you first meet

1 Mr. Moore?

2 A I believe Paul was looking for sources of
3 money. And he said that Mike Moore would be having some
4 soon, or something to that effect. And I believe he got
5 me a phone number and I phoned Mr. Moore.

6 Q Do you remember when that was approximately?

7 A I would say in early 1981. I don't think I
8 can give you the month on that, but it would be the
9 early months.

10 Q January or February, after that maybe?

11 A I believe a little bit after that, yes.

12 Q I see. Maybe early spring of '81?

13 A I think that would be fair to say, yes.

14 Q What did you talk to Mr. Moore about in that
15 phone conversation? What did you say and what did he
16 say?

17 A I asked him basically if he could loan on
18 real estate.

19 Q What did he say?

20 A He said yes.

21 Q Any qualifications?

22 A He never asked for any, no. None at all.

23 Q Did you reach any kind of an agreement with
24 him over the phone?

25 A No. He basically just told me to come see

1 him in Salt Lake City. And within two weeks I did come
2 down to Salt Lake and I did see him.

3 Q Could you move that microphone over so that
4 it picks you up. When you turn towards me, it tends not
5 to.

6 A Okay.

7 Q Thanks. You then came to Salt Lake City, I
8 assume.

9 A Yes, I did.

10 Q How long after the telephone conversation
11 was that?

12 A Not a whole lot of time had elapsed. It was
13 fairly quickly. I would say within a week or two.

14 Q You met him face to face at that time?

15 A Yes, I did.

16 Q And where was that?

17 A I don't know the address. You have weird
18 addresses in Salt Lake. Above the First Interstate
19 Bank.

20 Q Whose office was it?

21 A American Factoring.

22 Q Did you have a conversation with him on that
23 day?

24 A Yes, I did.

25 Q And was that at American Factoring offices?

1 A Yes, it was.

2 Q Who was present there?

3 A I believe Mr. Jeppsen was with me. And Mr.

4 Moore had a couple of his associates in the office at

5 the time, Mr. Fiet and Mr. Michaelson.

6 Q What did you discuss with Mr. Moore at this

7 meeting?

8 A We basically talked about properties, and if

9 they could be loaned on and so on. At that point he was

10 going to check and see if he could loan on real estate.

11 Q Did you show him some of the properties that

12 you owned at that time?

13 A I don't believe so, no. We basically talked

14 hypothetically.

15 Q Did you reach any kind of an agreement on

16 that particular day?

17 A I think it was left with the thing, I think

18 we can do business. And he wanted a little bit of time

19 to talk to his accountant or auditor or something to

20 that effect.

21 Q Did you hear back from Mr. Moore at some

22 point?

23 A Yes, I did.

24 Q What did he say at that time? Was that a

25 telephonic communication; did he call you by phone?

1 A I believe the next contact was by phone, yes.

2 Q And what did he say then?

3 A He wanted me to come see him again.

4 Q Did you set up another meeting then?

5 A Yes, we did.

6 Q Did you return to Salt Lake?

7 A Yes.

8 Q What happened in that meeting?

9 A He told me he wanted to use a -- he said,

10 yes, he can do real estate. And he said he wanted a

11 Utah property to use for the first property because the

12 investors would like it better if it was a Utah

13 property.

14 Q Let's back up just a little bit in time. If

15 I have the sequence correct, did you at some point set

16 up an Utah corporation?

17 A Yes, I did.

18 Q What was the name of that corporation?

19 A Lanseair Corporation.

20 Q Why did you set up that corporation?

21 A Well, in one of the early meetings with

22 Mr. Moore, he said that, Also for the investors'

23 purpose, he would like for his Utah company to be

24 dealing with a Utah company. He said it looked better.

25 Q Any other purpose for setting up Lanseair?

1 A No.

2 Q Did it ever conduct any business?

3 A With American Factoring, yes.

4 Q Any other business?

5 A I would have to say yes, although at this
6 moment -- it did do other things. Nothing of any
7 magnitude.

8 Q Let me ask you this question: There has been
9 some hint during the trial that it might have been
10 involved in shipping. Was that accurate?

11 A Shipping?

12 Q Shipping goods and various things over land
13 and sea and air. That's been the implication.

14 A No, no. There was nothing being shipped.

15 Q Who were the incorporators of Lanseair?

16 A As I remember, it was -- I think Paul was one
17 of them, Paul Jeppsen; Mike Brady and Karen Scoville, if
18 I remember correctly.

19 Q And who was Karen Scoville?

20 A My wife.

21 Q At that time?

22 A At that time, right.

23 Q Let me show you what's been marked as State's
24 Exhibit No. 37.

25 THE COURT: Has that been received?

1 MR. PARRISH: No. It's being introduced.

2 Q Do you recognize that document, sir?

3 A Yes, I do.

4 Q Are those the corporate filing papers for
5 Lanseair Corporation?

6 A Yes, they are.

7 Q What date does it indicate the corporation
8 was filed?

9 A In May of '81.

10 Q Does that comport with your memory?

11 A Yes. That sounds about right.

12 Q Did Lanseair set up any bank accounts?

13 A Yes, they did.

14 Q Where were those accounts?

15 A They were at Utah Bank & Trust, and later one
16 at First Interstate Bank.

17 Q I see.

18 MR. PARRISH: I'll offer Exhibit No. 37, your
19 Honor.

20 MR. BARBER: No objection.

21 THE COURT: It may be received.

22 (Whereupon, Exhibit No. 37 was
23 admitted into evidence.)

24 Q I believe you testified before we talked
25 about Lanseair that you had a meeting with Mr. Moore

1 where you were going to deed him a property in
2 Bountiful. Is that correct?

3 A That's correct, yes.

4 Q Did there actually come a time when you
5 obtained money in that transaction?

6 A Yes, there was.

7 Q Let me show you what's been marked as State's
8 Exhibit 38. Do you recognize those documents,
9 Mr. Bogart, if you look through them quickly?

10 A Yes, I do.

11 Q Does your signature appear on the first
12 page, the third page, fourth page?

13 A Yes, they do -- yes, it does.

14 Q Tell us what these are, starting with the
15 first document.

16 A The first document is a Continuing Guarantee
17 of Payment of Receivables.

18 Q How about the second document in the packet?

19 A The second signed document?

20 Q Yes. It begins on page 3, I believe.

21 A That's Assignment of Accounts Receivable for
22 Sale.

23 Q And who filled in the information in that
24 document?

25 A Mr. Moore did.

1 Q Where was that filled in?

2 A At his office.

3 Q If you would then turn to what appears to be

4 at the back. I believe there are four of them.

5 A Yes, there are.

6 Q Are you familiar with those documents?

7 A Yes, I am.

8 Q How were they created?

9 A Mr. Moore told me to get a Lanseair stamp

10 which appears on the top of the document, which I did.

11 And he would type all the information in and I would hit

12 it with the stamp.

13 Q Do any of those invoices represent true

14 accounts or notes receivable?

15 A No, they don't.

16 Q What do they represent?

17 A It says, "Due for services rendered

18 (investment analysis finding fee)."

19 Q Were you owed any money from Lanseair?

20 A No, I wasn't.

21 Q At any time?

22 A No.

23 Q Turn back to the Sale and Assignment of

24 Accounts Receivable, which begins on page 3. That

25 document purports, does it not, to have you selling

1 those invoices to American Factoring at a discount and
2 receiving a net amount of money. Is that correct?

3 A Yes, it does.

4 Q And again, those invoices are worth what?

5 A You mean the amount that it says?

6 Q What are the invoices worth really?

7 A In hard cash?

8 Q Yes.

9 A They are worth nothing.

10 Q Did you sell anything to American Factoring
11 in this transaction?

12 A No, I did not.

13 Q What amount of money did you receive,
14 acknowledge on this particular transaction?

15 A \$65,000.

16 Q How much did you ask for?

17 A I believe \$50-. Initially around \$50-.

18 Q And how is it that you received \$65-?

19 A Well, at the time I went in to see Mr. Moore,
20 we concluded the paperwork as far as the property,
21 itself. He drew up this Sale and Assignment of
22 Accounts. And as he is doing it, he says, We are going
23 to do a lot of business together; I can see that right
24 now. He says, I am going to give you \$55- -- no. I am
25 going to give you \$65,000. I said, Okay.

1 THE COURT: You didn't turn it down, did you?

2 THE WITNESS: No, sir, I did not.

3 Q (By Mr. Parrish) Now, you mentioned the
4 property. What was the property that you gave to
5 American Factoring at that time?

6 A Property in Bountiful.

7 Q Who owned that property?

8 A My mother-in-law at that time.

9 Q Describe that transaction. How did that come
10 about?

11 A Well, Mr. Moore, when we were talking about,
12 Who do you know, and I know this guy, in the early
13 stages, he found out that -- who my mother -- where my
14 mother-in-law lives. And it happened to be two or three
15 doors down from his ex-wife's. And he was real
16 interested in that house right from the very beginning.
17 He wanted the house; he wanted the property. Evidently,
18 there was some kind of restraining order on him seeing
19 his children.

20 MR. BARBER: Objection to all of that.

21 THE COURT: I'll sustain the objection and
22 order the answer stricken, and order the jury to ignore
23 those answers.

24 Just listen. We do it by question and
25 answer, not by narrative. Just listen to Mr. Parrish's

1 questions. And answer. If you don't understand it,
2 tell me. If you do, answer it.

3 THE WITNESS: Very good.

4 Q (By Mr. Parrish) Mr. Bogart, I think what we
5 are interested in here is the process of conveying that
6 house to American Factoring. What do you recall about
7 that? Was there a deed involved?

8 A Oh, the process. Yes. There was deed, yes.

9 Q Who signed the deed?

10 A My mother-in-law signed the deed.

11 Q What kind of deed was it?

12 A Warranty deed, I believe. Yes.

13 Q Now, what was the agreement as to that piece
14 of property?

15 A The agreement was that I would deed it to
16 American Factoring for six months. At that time it
17 would be deeded back.

18 Q Were they supposed to have any opportunity
19 to do anything else with that property during that time?

20 A No.

21 Q In other words, it was collateral. Is that
22 correct?

23 A It was collateral, that's correct.

24 Q In connection with this first set of
25 documents that you testified to, Exhibit 38, did you

1 have any discussion with Mr. Moore as these documents
2 were being filled out?

3 A These particular documents right here?

4 Q Yes. During this transaction did you talk
5 with him?

6 A Yes, we did.

7 Q Did you discuss with him whether these
8 invoices were true and accurate receivables or not?

9 A That was understood.

10 MR. BARBER: Objection.

11 Q Did you say anything --

12 THE COURT: Just a minute.

13 MR. BARBER: May that be stricken?

14 THE COURT: What's the basis of your
15 objection?

16 MR. BARBER: The basis -- and I'm afraid we
17 will have to go through it again. Will the reporter
18 read back the question.

19 (Question read back by the reporter.)

20 MR. BARBER: And the answer, your Honor, was,
21 it was understood.

22 THE COURT: Just answer the question.

23 I'll sustain the objection, and I'll order
24 that that short statement be stricken and instruct the
25 jury to ignore it.

1 THE WITNESS: What was the question again,
2 please?

3 THE COURT: Restate the question, Mr.
4 Parrish. Make sure he understood what the question is.

5 MR. BARBER: I don't think it's ambiguous,
6 Mr. Bogart.

7 Q (By Mr. Parrish) The question is, did you
8 have a discussion with Mr. Moore about the validity, if
9 you will, about these accounts or notes receivable?

10 A Yes.

11 Q What did you say to him?

12 A At the time we were filling out --

13 Q At any time.

14 A -- the Sale and Assignment -- I told him that
15 I didn't have any receivables.

16 Q Following that transaction, Mr. Bogart, did
17 you receive other money from --

18 MR. PARRISH: Well, let me offer State's
19 Exhibit 38, to keep the record clear, your Honor.

20 THE COURT: The witness has been testifying to
21 it?

22 MR. PARRISH: Yes, your Honor.

23 THE COURT: What is it called?

24 MR. PARRISH: It's factoring documents, a set
25 of factoring documents.

1 THE COURT: Any objection, Mr. Barber?

2 MR. BARBER: None.

3 THE COURT: It may be received.

4 (Whereupon, Exhibit No. 38 was
5 admitted into evidence.)

6 Q (By Mr. Parrish) Following that transaction,
7 Mr. Bogart, did you receive other money from American
8 Factoring?

9 A Yes, I did.

10 Q What process was followed in the transactions
11 after that first one?

12 A The same process that was followed in this
13 transaction here.

14 Q Did you deed property to Mr. Moore in those
15 later transactions?

16 A Yes, I did.

17 Q What properties did you deed to him?

18 A By that you mean California or --

19 Q Properties that you already owned.

20 A Real property, real estate?

21 Q Okay. All right, fine. Were each one of the
22 transactions set up as this one was as far as the
23 factoring documents?

24 A Yes, they were. They were structured
25 basically the same.

1 Q Okay, now, what's the date on the Guarantee
2 of Payment of Receivables? That's the first page of
3 this.

4 A April 1, '82.

5 Q So, this is a year after you began doing
6 business with American Factoring?

7 A Approximately, yes.

8 Q Your signature appears on these documents?

9 A Yes, they do.

10 Q Would you turn to the Sale and Assignment of
11 Accounts Receivable, which begins at page 3.

12 A Yes.

13 Q What is the necessary amount which is
14 represented that you received?

15 A \$215,000.

16 Q Do you recall receiving that amount of money
17 in April of 1982?

18 A No, I do not.

19 Q Did you in some of these transactions not
20 receive what was indicated on the document?

21 A Did I not receive -- no. I did not receive
22 what some of them indicates.

23 Q I'm sorry. That was a double negative
24 question, and I'm sorry for the confusion on that.

25 MR. PARRISH: I'd offer State's Exhibit 41.

1 Q No. Paperwork to back up or to memorialize
2 that transaction.

3 A There was times when it was done at a later
4 date.

5 Q But there were always documents?

6 A Later, yes.

7 Q Okay. Mr. Bogart, in total, how much money
8 did you receive from American Factoring?

9 A I believe it was somewhere in the
10 neighborhood of between \$800- and \$900,000.

11 Q Over what period of time did you receive
12 that money?

13 A From the first transaction, I believe, in May
14 1981 up until later '82 or early '83.

15 Q What did you do with the money, Mr. Bogart?

16 A Most of it went back to American Factoring
17 for the payments.

18 Q Did you ever use it to buy distressed
19 properties?

20 A Yes.

21 Q How often did that occur?

22 A Every time Mr. Moore would need another one
23 for collateral, I would pick one up.

24 Q Did you ever repay any of that money out of
25 of your own funds or out of third sources other than

1 funds advanced to you by American Factoring?

2 A Definitely not.

3 Q If American Factoring records were to show
4 payments from you or from Lanseair, what would those
5 represent?

6 A Their own money.

7 Q Explain that.

8 A Well, I set up the bank account in Bountiful
9 at Utah Bank & Trust. And every time a payment would
10 come due, the interest would be -- well, as the money
11 accrued higher and higher, the payments would become
12 more. But whatever the payment would be, I would write
13 it back out of the account. And I had just taken a
14 check and put it in over there, and I would write it
15 right back.

16 Q What was the source of that money into
17 Lanseair account?

18 A American Factoring.

19 Q Was there ever any other source?

20 A I don't think so, no.

21 Q Any significant source?

22 A It would have been an accident if it was.

23 Q You may have put in a few of your own
24 dollars, but you didn't intend to?

25 A I sure didn't intend to, no.

1 pledged as collateral to American Factoring, did the
2 appraisals given reflect true market value?

3 A No.

4 Q Were the properties encumbered or
5 unencumbered?

6 A They were encumbered.

7 Q Every one of them?

8 A Every one of them.

9 Q Did Mr. Moore -- did you tell Mr. Moore about
10 the encumbrance?

11 A Sure. I brought him a title report in most
12 cases that showed the amount of encumbrances against the
13 property.

14 Q Comparing all of the real values of those
15 properties as they were encumbered with the total
16 amount of money that you received from American
17 Factoring, what was the ratio of the value of the
18 collateral to the loans that you received?

19 A Depends on whose appraisal we use.

20 Q And again, my question was -- and I know it
21 was kind of a long question -- the true and accurate
22 value of those properties?

23 A Market value, I would say the total
24 properties were probably worth one forth of the amount
25 loaned on them in equity position.

1 effect.

2 Q Did he explain to you what he meant by, he
3 needs to get it on the books?

4 A Well, with not applying any of the money that
5 I was paying back to the principal of the loans, the
6 loans would keep increasing and would need more
7 collateral to cover them up.

8 Q In all of your transactions, Mr. Bogart, with
9 American Factoring, did you ever deal with anybody else
10 who represented American Factoring besides Mr. Moore?

11 A No. I don't believe so.

12 Q When you did discuss specific business
13 transactions with Mr. Moore, were other American
14 Factoring employees ever present?

15 A No. Most of the time they would sort of
16 leave. As we started business transactions they would
17 sort of fade into the woodwork.

18 Q I assume that you knew where he was getting
19 money that he was loaning to you.

20 A Yes, I did. I knew it was investor funds.

21 Q What interest rates were you supposed to be
22 paying on the money that you obtained from American
23 Factoring?

24 A It varied.

25 Q What was your original agreement about